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Reader Aids
Additional information, including a list of telephone numbers, finding aids, reminders, and a list of Public Laws appears in the Reader Aids section at the end of this issue.

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Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Rules and Regulations

Federal Register
Vol. 62, No. 224
Thursday, November 20, 1997

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 97–056–8]

Mediterranean Fruit Fly; Removal of an Area From Quarantine

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the Mediterranean fruit fly regulations by removing all of the quarantined area in Polk County, FL, from the list of quarantined areas. We have determined that the Mediterranean fruit fly has been eradicated from this area and that restrictions are no longer necessary. This action relieves unnecessary restrictions on the interstate movement of regulated articles from this area.

DATES: Interim rule effective November 14, 1997. Consideration will be given only to comments received on or before January 20, 1998.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 97–056–8, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 97–056–8. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 am. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Michael B. Stefan, Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236, (301) 734–8247; or e-mail: mstefan@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

The Mediterranean fruit fly, *Ceratitis capitata* (Wiedemann), is one of the world's most destructive pests of numerous fruits and vegetables. The Mediterranean fruit fly can cause serious economic losses. Heavy infestations can cause complete loss of crops, and losses of 25 to 50 percent are not uncommon. The short life cycle of this pest permits the rapid development of serious outbreaks.

The regulations in 7 CFR 301.78 through 301.78–10 (referred to below as the regulations) restrict the interstate movement of regulated articles from quarantined areas to prevent the spread of Medfly to noninfested areas of the United States. Since an initial finding of Medfly infestation in Hillsborough County, FL, in June 1997, quarantined areas have included all or portions of Hillsborough, Manatee, Orange, Polk, and Sarasota Counties, FL.

In an interim rule effective on June 6, 1997, and published in the **Federal Register** on June 20, 1997 (62 FR 33537–33539, Docket No. 97–056–2), we added a portion of Hillsborough County, FL, to the list of quarantined areas and restricted the interstate movement of regulated articles from that quarantined area. In a second interim rule effective on July 3, 1997, and published in the **Federal Register** on July 10, 1997 (62 FR 36976–36978, Docket No. 97–056–3), we expanded the quarantined area in Hillsborough County, FL, and added areas in Manatee and Polk Counties, FL, to the list of quarantined areas. In a third interim rule effective on August 7, 1997, and published in the **Federal Register** on August 13, 1997 (62 FR 43269–43272, Docket No. 97–056–4), we further expanded the quarantined area by adding new areas in Hillsborough County, FL, and an area in Orange County, FL, to the list of quarantined areas. In that third interim rule, we also revised the entry for Manatee County, FL, to make the boundary lines of the quarantined area more accurate. In a fourth interim rule effective on September 4, 1997, and published in the **Federal Register** on September 10, 1997 (62 FR 47553–47558, Docket No. 97–056–5), we quarantined a new area in Polk County, Fl, and an area in Sarasota County, FL. In a fifth interim rule effective on October 15, 1997, and published in the **Federal Register** on October 21, 1997 (62 FR 54571–54572, Docket No. 97–056–7), we removed all or portions of the quarantined areas in Hillsborough, Manatee, Orange, Polk, and Sarasota Counties, FL, from the list of quarantined areas.

We have determined, based on trapping surveys conducted by the Animal and Plant Health Inspection Service (APHIS) and Florida State and county agency inspectors, that the Medfly has been eradicated from Polk County, FL. The last finding of the Medfly thought to be associated with the infestation in this area occurred on August 28, 1997. Since then, no evidence of infestation has been found in Polk County, FL. We are, therefore, removing Polk County, FL, from the list of areas in § 301.78–3(c) quarantined because of the Medfly. A portion of Hillsborough County, FL, remains quarantined.

Immediate Action

The Administrator of the Animal and Plant Health Inspection Service has determined that there is good cause for publishing this interim rule without prior opportunity for public comment. The area in Florida affected by this document was quarantined to prevent the Medfly from spreading to noninfested areas of the United States. Because the Medfly has been eradicated from this area, and because the continued quarantined status of this area would impose unnecessary regulatory restrictions on the public, immediate action is warranted to relieve restrictions.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make this rule effective upon signature. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. It will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action the Office of Management and Budget has waived its review process required by Executive Order 12866.

This interim rule amends the Medfly regulations by removing an area in Polk County, FL, from quarantine for Medfly. This action affects the interstate movement of regulated articles from this area. There are approximately 31 small entities that could be affected, including 7 fruit stands, 10 food stores, 1 transporter, 9 commercial growers, and 4 processing plants.

These small entities comprise less than 1 percent of the total number of similar small entities operating in the State of Florida. In addition, most of these small entities sell regulated articles primarily for local intrastate, not interstate movement, and the sale of these articles would not be affected by this interim rule.

Therefore, this action should have a minimal economic effect on the small entities operating in the area of Polk County that has been quarantined because of Medfly. We anticipate that the economic impact of lifting the quarantine, though positive, will be no more significant than was the minimal impact of its imposition.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 7 CFR part 301 is amended as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 147a, 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.22, 2.80, and 371.2(c).

2. In § 301.78–3, paragraph (c), the entry for Florida is revised to read as follows:

§ 301.78–3 Quarantined areas.

* * * * *

(c) * * *

FLORIDA

Hillsborough County. That portion of Hillsborough County beginning at the intersection of I–75 and the Hillsborough/Pasco County line; then west along the Hillsborough/Pasco County line to the section line dividing sections 5 and 6, T. 27 S., R. 18 E.; then south along the section line dividing sections 5 and 6, T. 27 S., R. 18 E. to Veterans Expressway; then south along Veterans Expressway to Erhlich Road; then west along Erhlich Road to Gunn Highway; then north along Gunn Highway to Mobley Road; then west along Mobley Road to Racetrack Road; then southwest along Racetrack Road to the Pinellas/Hillsborough County line; then south along the Pinellas/Hillsborough County line to I–275; then east along I–275 to the western most land mass at the eastern end of the Howard Franklin Bridge; then along an imaginary line along the shoreline of the Old Tampa Bay, Tampa Bay, and Hillsborough Bay (including the Interbay Peninsula, Davis Island, Harbour Island, Hooker's Point, and Port Sutton) to the northern shoreline of the Alafia River's extension; then east along the northern shoreline of the Alafia River to I–75; then north along I–75 to the point of beginning.

Done in Washington, DC, this 14th day of November 1997.

Craig A. Reed,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–30506 Filed 11–19–97; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Parts 416 and 457

Pea Crop Insurance Regulations; and Common Crop Insurance Regulations, Green Pea Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) finalizes specific crop provisions for the insurance of green peas. The provisions will be used in conjunction with the Common Crop Insurance Policy Basic Provisions, which contain standard terms and conditions common to most crops. The intended effect of this action is to provide policy changes to better meet the needs of the insured, separate green peas and dry peas into separate crop insurance provisions, include the current pea crop insurance regulations with the Common Crop Insurance Policy for ease of use and consistency of terms, and to restrict the effect of the current pea crop insurance regulations to the 1997 and prior crop years.

EFFECTIVE DATES: December 22, 1997.

FOR FURTHER INFORMATION CONTACT: Louise Narber, Insurance Management Specialist, Research and Development, Product Development Division, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO 64131, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Executive Order No. 12866

The Office of Management and Budget (OMB) has determined this rule to be exempt for the purposes of Executive Order No. 12866, and, therefore, this rule has not been reviewed by OMB.

Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 [44 U.S.C. chapter 35], collections of information have been approved by the Office of Management and Budget (OMB) under control number 0563–0053.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory

provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order No. 12612

It has been determined under section 6(a) of Executive Order No. 12612, Federalism, that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on states or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

Regulatory Flexibility Act

This regulation will not have a significant economic impact on a substantial number of small entities. The amount of work required of insurance companies will not increase because the information used to determine eligibility is already maintained at their office and the other information required is already being gathered as a result of the present policy. No additional actions are required as a result of this action on the part of either the producer or the reinsured company. Additionally, the regulation does not require any action on the part of the small entities than is required on the part of the large entities. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605), and no Regulatory Flexibility Analysis was prepared.

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order No. 12372

This program is not subject to the provisions of Executive Order No. 12372, which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order No. 12988

This final rule has been reviewed in accordance with Executive Order No. 12988 on civil justice reforms. The provisions of this rule will not have a retroactive effect prior to the effective date. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. The administrative appeal provisions published at 7 CFR part 11 must be exhausted before any action for judicial review may be brought.

Environmental Evaluation

This action is not expected to have a significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

National Performance Review

This regulatory action is being taken as part of the National Performance Review Initiative to eliminate unnecessary or duplicative regulations and improve those that remain in force.

Background

On Thursday, May 1, 1997, FCIC published a proposed rule in the **Federal Register** at 62 FR 23680 to add to the Common Crop Insurance Regulations (7 CFR part 457), a new section, 7 CFR 457.137, Green Pea Crop Insurance Provisions. The new provisions will be effective for the 1998 and succeeding crop years. These provisions will replace and supersede the current provisions for insuring green peas found at 7 CFR part 416 (Pea Crop Insurance Regulations). FCIC also amends 7 CFR part 416 to limit its effect to the 1997 and prior crop years.

Following publication of the proposed rule, the public was afforded 30 days to submit written comments and opinions. A total of 58 comments were received from an insurance service organization, a reinsured company, a crop insurance agent, and a food corporation. The comments received, and FCIC's responses are as follows:

Comment: An insurance service organization recommended that several definitions common to most crops be put into the Basic Provisions.

Response: The Basic Provisions, which are currently in the regulatory review process, will include definitions of commonly used terms, and this rule will be revised to delete these definitions when the Basic Provisions are published as a final rule.

Comment: An insurance service organization recommended that the sentence in the definition of ''bypassed acreage'' that states ''Bypassed acreage upon which an indemnity is payable will be considered to have a zero yield for Actual Production History (APH) purposes'' be deleted since it is addressed elsewhere and does not belong in the definition.

Response: FCIC has deleted the second sentence from, and revised, the definition of bypassed acreage. Provisions have been added in section 3 to explain bypassed acreage when determining approved yield.

Comment: An insurance service organization questioned whether dry pea varieties were shell type or pod type peas.

Response: The definition of green peas specifies that it may be shell or pod type. The definition of ''dry peas'' has been revised to clarify the distinction between green and dry peas.

Comment: An insurance service organization recommended that the definition of ''final planting date'' be revised to delete the phrase ''for the full production guarantee'' since the late planting provisions are not applicable.

Response: The proposed recommendation has not been made because late planting coverage will be available if allowed by the Special Provisions and the producer provides written approval from the processor by the acreage reporting date that it will accept the production from the late planted acreage.

Comment: An insurance service organization and a reinsured company expressed concern with the definition of ''good farming practices'' which makes reference to ''cultural practices generally in use in the county * * * recognized by the Cooperative State Research, Education, and Extension Service as compatible with agronomic and weather conditions in the county.'' The commenters questioned whether cultural practices that are not explicitly recognized (or possibly known) by the Cooperative State Research, Education, and Extension Service might exist. The commenters indicated that the term ''county'' in the definition of ''good farming practice'' should be changed to ''area.'' The insurance service organization also recommended adding the word ''generally'' before ''recognized by the Cooperative State Research, Education, and Extension Service * * *.''

Response: The Cooperative State Research, Education, and Extension Service (CSREES) recognizes farming practices that are considered acceptable for producing green peas. If a producer is following practices currently not recognized as acceptable by the CSREES, such recognition can be sought by interested parties. Use of the term ''generally'' will only create an ambiguity and make the definition more difficult to administer. Although the cultural practices recognized by the CSREES may only pertain to specific areas within a county, the actuarial documents are on a county basis. Therefore, no change has been made.

Comment: An insurance service organization questioned if the definition

of ''peas'' was intended to include both ''dry'' and ''green'' peas.

Response: The definition of ''peas'' includes both green and dry peas. The definition of ''peas'' has been revised to include green or dry peas.

Comment: An insurance service organization recommended that the definition of ''replanting'' be clarified by inserting ''green pea'' between the last two words (''successful'' and ''crop'') of the sentence.

Response: To be consistent with language contained in the proposed rule of the Basic Provisions, FCIC has revised the definition to clarify that ''replanting'' is performing the cultural practices necessary to prepare the land to replace the seed of the damaged or destroyed crop and then replacing the seed in the insured acreage.

Comment: An insurance service organization recommended that section 2(c) of the proposed rule clarify whether optional units are available if the processor contract stipulates the number of contracted acres, or only if the contract does not specify an amount of production.

Response: FCIC agrees and has amended section 2(a) to clarify that for processor contracts that stipulate a specific amount of production to be delivered, the basic unit will consist of all acreage planted to the insured crop in the county that will be used to fulfill the processor contract, and optional units will not be established. The language in section 2 has also been revised and reformatted to clearly state the requirements for both the acreage based and production based processor contracts.

Comment: An insurance service organization, a reinsured company, an insurance agent, and a food corporation recommended that unit division by green pea type remain as an option. The commenters stated that: (1) Unit division by early, mid and late-season green peas is the only unit division option available in many areas other than share or farm serial number; (2) it would complicate loss adjustment if a claim on an early-season variety had to be deferred until the late-season variety was harvested; (3) productivity varies between types (as has been defined as requiring a specific amount of heat units for maturity during a normal growing season); and (4) growing early and late-season green peas are two separate operations. The early-season green peas are planted in April and early May and thrive on the cooler temperatures. They are harvested in June and avoid the heat of early summer. This early harvest allows the producer the option of planting a full season crop after the peas are harvested. The early-season peas are lower yielding and are priced less on processor contracts. Late-season green peas are full season, higher yielding, and priced much higher to allow the producer a return competitive with other full season crops.

Response: As new varieties of green peas have been developed and the original types intermixed, it has become more and more difficult to define the type of green pea into which a variety falls. Due to the need for consistency among regions and crops, FCIC has determined to delete units by type for early, mid, and late season green peas or by planting date.

Comment: An insurance service organization and a reinsured company questioned the distinction between ''shell'' and ''pod'' type peas and questioned what would be accomplished by providing optional units by shell or pod type peas. The commenter also asked how shell and pod type peas will be identified.

Response: Shell type peas are defined as green peas that are shelled prior to eating, canning, or freezing. Pod type peas are defined as green peas intended to be eaten without shelling (*e.g.*, snap peas, snow peas, and Chinese peas). Pod type and shell type peas are grown for a different purpose and a different market. Because of the clear distinction between these types of peas, the provisions have been amended to allow optional unit division for shell type and pod type green peas.

Comment: An insurance service organization and a reinsured company expressed concern that FSA has consolidated all land under the same ownership into one Farm Serial Number wherever possible in the Northeast states, which serves as a deterrent to the purchase of buy-up coverage by the larger, successful producer.

Response: Depending on the processor contract terms, optional units are available by section, section equivalent, FSA Farm Serial Number, irrigated and non-irrigated practice, or by shell type and pod type green peas.

Comment: An insurance service organization recommended revising section 2(f)(1) of the proposed rule to read ''You must have provided records by the production reporting date, which can be independently verified, * * *.'' They stated that this would eliminate the potential for misinterpretation that the policyholder qualifies for separate optional units simply by listing them on the acreage report and having records available at home.

Response: Producers do not have to provide records by the production reporting date. Producers report production and acreage information by the production reporting date and only provide records which can be independently verified when requested by the insurance provider. Therefore, no change has been made.

Comment: A reinsured company questioned whether verification of production from an optional unit using ''measurement of stored production,'' as specified in section 2(f)(3) of the proposed rule applies to green peas.

Response: Green peas are not put into storage before processing. Therefore, FCIC has removed this provision.

Comment: An insurance service organization recommended removal of the opening phrase in section 2(f)(4)(ii) of the proposed rule that states ''In addition to, or instead of, establishing optional units by section, section equivalent or FSA Farm Serial Number, * * *'' since section 2(f)(4) of the proposed rule specifies that ''Each optional unit must meet one or more of the following criteria, * * *.''

Response: FCIC agrees and has revised section 2(b)(5) of the final rule accordingly.

Comment: An insurance service organization questioned if the standard language in section 3(a) of the proposed rule which allows the producer to select only one price election for all the green peas in the county insured under this policy unless the Special Provisions provide different price elections by type, in which case the producer may select one price election for each green pea type designated in the Special Provisions, refers to the current early, mid, and late-season types or to the shell and pod types specified in the proposed rule. They also emphasized that the price election for green peas is a percentage of the contract price. As some producers contract with more than one processor, the contract prices may be different, and it would not be possible to limit them to one ''price'' by type, only to one ''percentage.''

Response: FCIC agrees and has revised section 3(a) to specify percentages.

Comment: An insurance service organization recommended that the provision in section 3(b) of the proposed rule, that addressed the weight of the shelled peas as the basis for loss adjustment calculations, APH yields, and the guarantee, be moved to section 12(c)(2).

Response: FCIC believes that the provisions in section 3(b) of the proposed rule are being misinterpreted. The harvesting equipment removes the peas from the pods of shell type peas prior to delivery to the processor. In addition, the APH yield and guarantee

are based on the yield after the tenderometer reading, grade factor, or sieve size is taken into consideration. Therefore, section 3(b) of the proposed rule has been deleted.

Comment: An insurance service organization stated that February 15 seems early for the cancellation and termination dates for Delaware and Maryland. They stated that the date table has a March 15 sales closing date for these states and questioned if the 1998 date would be a month earlier and, if so, why.

Response: The sales closing date contained in the Special Provisions for these states was February 15 for the 1996 and 1997 crop years, not March 15. That date is set by statute. The cancellation and termination dates for all crops are being changed to correspond with the sales closing date. Therefore, no change has been made.

Comment: An insurance service organization stated that language in section 6 requiring the producer to provide a copy of the processor contract no later than the acreage reporting date could provide a loophole by allowing producers to wait until acreage reporting time to decide if they want coverage.

Response: There is no evidence that allowing the producer to provide a copy of the processor contract as late as the acreage reporting date has resulted in producers waiting to decide until the acreage reporting date if they want coverage. Green pea producers usually have a processor contract in-force by the final planting date. The requirement to provide a copy of the processor contract with the acreage report is convenient for the producer. Therefore, no change has been made.

Comment: An insurance service organization questioned whether any processor contract would allow interplanted green peas or green peas planted into an established grass or legume. The commenter further indicated that consideration should be given to inserting the language in section 7(a)(4) of the proposed rule into the Basic Provisions.

Response: FCIC agrees that processing green peas has seldom, if ever, been interplanted with another crop or planted into an established grass or legume. However, production practices are constantly evolving. FCIC chooses to retain the provisions of section 7(a)(3) of the final rule to accommodate such developments if they should occur. In addition, the interplanted language is not consistent among the crop policies and, therefore, will be retained in the crop provisions.

Comment: An insurance service organization indicated that language in section 7(b) that states ''You will be considered to have a share in the insured crop if, under the processor contract, you retain possession of the acreage on which the green peas are grown, * * *'' suggests that only a landlord would have a share in the insured crop. The commenter questioned whether the provision in section 7(b) is already covered in sections 7(a)(1) and (3) of the proposed rule.

Response: The language in section 7(b) was intended to cover producers who have a crop share agreement, rent, or own acreage. The word ''possession'' has been changed to ''control'' for clarification. Section 7(a) specifies requirements for insurance coverage on the crop, while section 7(b) specifies requirements for an insurable share in the crop. Therefore, both provisions are necessary.

Comment: An insurance service organization and a reinsured company questioned whether the provision in section 9(b), which states that the insurance period ceases on the date sufficient production is harvested to fulfill the producer's processor contract, conflicts with the provision in section 12(a), that states ''We will determine your loss on a unit basis.'' The commenters questioned whether production to count from an appraisal prior to harvest would be included when determining fulfillment of the processor contract. The insurance service organization questioned whether the insured would know when enough production is harvested to fulfill the processor contract. This commenter asked if production exceeding the contracted amount is considered production to count for APH or loss adjustment or whether the processor settlement sheet is the only acceptable record. The insurance service organization noted that the provisions in section 9(b) state ''* * * the insurance period ends when the production delivered to the processor equals the amount of production stated in the green pea contract.'' However, the commenter questioned whether ''delivered to'' is the same as ''accepted by'' the processor.

Response: Section 9(b) does not conflict with section 12(a). For processor contracts based on a stated amount of production, FCIC is only insuring the contract amount and the producer can only obtain basic units by processor contract. Therefore, once the contract is fulfilled, insurance ceases on the unit and there is no payable loss. If the contract is not fulfilled and there is still unharvested production, any insurable cause of loss is covered. With respect to the issue of production from appraised acreage, such production will not count toward fulfillment of the processor contract, although it may be used to determine production to count for the unit or the producer's approved yield if the acreage is not bypassed due to an insurable cause of loss that renders such production unacceptable to the processor. With respect to when the producer would know when the processor contract was fulfilled, records are kept as production is delivered to the processor. Therefore, the producer can determine when the contract was fulfilled. All production from the unit, including any excess of the amount stated in the contract, will be considered as production to count when determining the producer's approved yield. For the purposes of loss adjustment, the amount shown on the settlement sheet, plus any appraised production that was not bypassed due to an insurable cause that rendered the production unacceptable to the processor, will be included as production to count. FCIC has revised section 9(b) to clarify that insurance ceases when the contract is fulfilled if the processor contract stipulates a specific amount of production.

Comment: An insurance service organization stated that September 15 is too early for the end of insurance coverage for dry peas and that the change to September 30 must be incorporated into the dry pea provisions as well.

Response: The dry pea and green pea provisions are now separate provisions with different dates. The insured crop under these provisions is green peas. If the green peas will be harvested as dry peas, insurance coverage will end on September 30 but only if notice was provided in accordance with section 11(d).

Comment: An insurance service organization stated that they received one comment stating that the provision in section 10(a)(1)(ii) of the proposed rule, which states that abnormally hot or cold temperatures that result in bypassed acreage because an unexpected number of acres over a large producing area are ready for harvest at the same time, and the total production is beyond the normal capacity of the processor to timely harvest or process, should be eliminated because it provides a loophole that can easily be abused when the processor has contracted too many acres.

Response: The comment does reveal an opportunity for an abuse. Therefore, the provision has been clarified.

Comment: An insurance service organization questioned the provision in section 10(a)(4), which states that insurance is provided against ''Plant disease on acreage not planted to peas the previous crop year * * *.'' The commenter assumed this would apply even if a rotation requirement was not specified in the Special Provisions.

Response: This provision has been revised to specify that insurance coverage will be provided against plant disease on acreage not planted to the peas the previous crop year unless provided for in the Special Provisions or by written agreement, but not damage due to insufficient or improper application of disease control measures.

Comment: An insurance service organization suggested changing the wording in section 10(a)(8) to eliminate the reference to 10(a)(1) through (7) and state ''Failure of the irrigation water supply, if due to an insured cause of loss.''

Response: Referencing 10(a)(1) through (7) makes it clear that failure of the irrigation water supply must be due to these specific causes of loss. Therefore, no change has been made.

Comment: An insurance service organization questioned how the provision in section 10(b)(1)(ii), which states that insurance coverage is not provided if acreage is bypassed based on the availability of a crop insurance payment, is to be enforced.

Response: The adjuster should be able to make this determination based on various factors such as if a harvest pattern exists that clearly indicates the processor is bypassing producers with crop insurance coverage in favor of producers without crop insurance even though the quality of the crop is similar. Language has been added to state that an indemnity will be denied or have to be repaid if it is determined that bypassed acreage was due to the availability of a crop insurance payment.

Comment: An insurance service organization questioned a discrepancy between section 9(b) of the proposed rule, which states that insurance ceases on ''The date you harvested sufficient production to fulfill your processor contract,'' and section 10(b)(5) of the proposed rule which states that loss of production will not be insured if ''Due to damage that occurs to unharvested production after you deliver the production required by the processor contract.'' The commenter indicated that this provision is not necessary since any damage occurring after delivery would be outside the insurance period as indicated in section 9(b).

Response: FCIC agrees with the insurance service organization and has deleted section 10(b)(5).

Comment: An insurance service organization stated that the language in section 11(c) does not address timely notice if damage is discovered less than 15 days prior to harvest.

Response: FCIC has revised section 11(c) to clarify that an immediate notice of loss is required if damage is discovered within 15 days prior to harvest or during harvest.

Comment: An insurance service organization stated that section 12(b), which explains how a claim is settled, is too wordy and difficult to follow.

Response: This section has been revised to clarify the settlement of claims calculation, including the addition of an example.

Comment: An insurance service organization indicated that payments by the processor for bypassed acreage should be considered to have value to count as is done with salvaged grains.

Response: There is nothing in this policy which precludes a producer from obtaining any other form of insurance against losses as long as such insurance is not under the Federal Crop Insurance Act. Since the processor and producer contribute to the unharvested acreage pool, such payment will not be considered when determining production to count.

Comment: An insurance service organization stated that section 12(c)(1)(iii) of the proposed rule should not allow the insured to defer settlement and wait for a later, generally lower, appraisal, especially on crops that have a short ''shelf life.''

Response: A later appraisal will only be necessary if the company and the insured do not agree on the appraisal or if the company believes that the crop needs to be carried further. The producer must continue to care for the crop. If the producer does not continue to care for the crop, the original appraisal will be used. Therefore, no change has been made.

Comment: A reinsured company and an insurance service organization stated that section 12(c)(2) of the proposed rule which reads ''The amount of such production will be determined by dividing the dollar amount as required by the contract for the quality and quantity of the peas delivered to the processor by the base contract price per pound;'' is difficult to understand.

Response: This provision which specifies the ''dollar amount as required by the contract for the quality and quantity of the peas delivered to the processor * * *'' accounts for variations in the contract price for the tenderometer reading, grade factor, or sieve size of the delivered peas. The language has been clarified.

Comment: An insurance service organization and a reinsured company questioned if late and prevented planting provisions would be available for green peas. A crop insurance agent and a food corporation stated that late planting provisions should be available for green peas. Green pea producers plant according to heat units to provide a planting and harvesting schedule so that a processor can harvest uniformly during the growing season. Current varieties planted late can tolerate higher temperature extremes and do not pose unreasonable productivity risks nor does it impact the processor's ability to timely harvest and process the green peas. Producers need a good risk management program.

Response: A late planting period for green peas may be appropriate for some growing areas. Therefore, section 13 is revised to provide a late planting period if allowed by the Special Provisions and the insured provides written approval from the processor by the acreage reporting date that it will accept the production from the late planted acreage. Prevented planting provisions will also be added if available in the Basic Provisions.

Comment: An insurance service organization and a reinsured company recommended removal of the requirement that written agreements be renewed each year if there are no significant changes to the farming operation. The insurance service organization stated that section 14(d) should perhaps refer to the date specified in the agreement instead of limiting the agreement for one year. An insurance service organization recommended that section 14 be put into the Basic Provisions.

Response: Written agreements are intended to supplement policy terms or permit insurance in unusual situations that require modification of the otherwise standard insurance provisions. If such practices continue year to year, they should be incorporated into the policy or Special Provisions. It is important to minimize written agreement exceptions to assure that the insured is well aware of the specific terms of the policy. Therefore, no change will be made to the requirement that written agreements be renewed each year. FCIC has proposed that the Written Agreement provisions be included in the Basic Provisions.

In addition to the changes described above, FCIC has made minor editorial changes and has amended Green Pea Crop Insurance Provisions as follows:

1. Amended and clarified the paragraph preceding section 1 to include the Catastrophic Risk Protection Endorsement.

2. Section 1—Added a definition of ''approved yield,'' and amended the definitions of ''base contract price,'' ''bypassed acreage,'' ''pod type,'' ''processor,'' ''processor contract,'' ''replanting,'' and ''shell type'' for clarity. The definition of ''practical to replant'' is amended to clarify that it will not be considered practical to replant unless the acreage can produce at least 75 percent of the approved yield and the processor agrees in writing that it will accept the production from the replanted acreage. The definition of ''processor contract'' is amended to clarify that multiple contracts with the same processor that specify amounts of production will be considered as a single processor contract unless the contracts are for different types of green peas.

3. Section 2—Removed the reference to ''written agreement'' in section 2(b) of the proposed rule and added ''written agreement'' in section 2(b)(5) of the final rule to clarify which provisions may be revised by written agreement.

4. Section 7—Removed section 7(a)(2) of the proposed rule. This provision is not necessary since section 7(a)(3) of the proposed rule stated that the green peas must be grown under, and in accordance with, the requirements of a processor contract. If grown under a processor contract, the green peas will be canned or frozen. Section 7(c) is amended for clarity.

5. Section 9(a)(2)—Clarified that the insurance period ends when the green peas should have been harvested but were not harvested.

6. Section 10—Amended section 10(a) for clarity. Section 10(b) is reformatted and amended for clarity. Also, removed section 10(b)(3) of the proposed rule which stated ''Due to green peas not being timely harvested unless such delay in harvesting is solely and directly due to an insured cause of loss;'' because it is unnecessary.

7. Section 11—Clarified that the insured must give notice of loss within 3 days after the date harvest should have started if the acreage will not be harvested. The insured must also provide documentation stating why the acreage was bypassed.

8. Section 12—A new section 12(c)(3) of the final rule is added to clarify that appraised production will include all harvested production from any other insurable units that have been used to fill the processor contract for a unit. Section 12(d) of the proposed rule is deleted because of duplication with section 12(c)(2).

9. Section 14—Clarified that only terms of this policy that are specifically designated for the use of written agreements may be altered by written agreement if the listed conditions are met.

List of Subjects in 7 CFR Parts 416 and 457

Crop insurance, Green pea, Pea crop insurance regulations.

Final Rule

Accordingly, for the reasons set forth in the preamble, the Federal Crop Insurance Corporation hereby amends 7 CFR parts 416 and 457, as follows:

PART 416—PEA CROP INSURANCE REGULATIONS FOR THE 1986 THROUGH 1997 CROP YEARS

1. The authority citation for 7 CFR part 416 is revised to read as follows:

Authority: 7 U.S.C. 1506(l), 1506(p).

2. The part heading is revised to read as set forth above.

3. The subpart heading ''Subpart-Regulations for the 1986 and Succeeding Crop Years'' is removed.

4. Section 416.7 is amended by revising the introductory text of paragraph (d) to read as follows:

§ 416.7 The application and policy.

* * * * *

(d) The application is found at subpart D of part 400, General Administrative Regulations (7 CFR 400.37, 400.38). The provisions of the Pea Insurance Policy for the 1986 through 1997 crop years are as follows:

* * * * *

PART 457—COMMON CROP INSURANCE REGULATIONS; REGULATIONS FOR THE 1994 AND SUBSEQUENT CONTRACT YEARS

5. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(l), 1506(p).

6. Section 457.137 is added to read as follows:

§ 457.137 Green pea crop insurance provisions.

The Green Pea Crop Insurance Provisions for the 1998 and succeeding crop years are as follows:

FCIC policies:

UNITED STATES DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Reinsured policies:

(Appropriate title for insurance provider)

Both FCIC and reinsured policies

Green Pea Crop Provisions

If a conflict exists among the policy provisions the order of priority is as follows: (1) the Catastrophic Risk Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions (§ 457.8) with (1) controlling (2), etc.

1. Definitions.

Approved yield. The yield determined in accordance with 7 CFR part 400, subpart G.

Base contract price. The price stipulated in the processor contract for the tenderometer reading, grade factor, or sieve size that is designated in the Special Provisions, if applicable, without regard to discounts or incentives that may apply.

Bypassed acreage. Land on which production is ready for harvest but the processor elects not to accept such production so it is not harvested.

Combining (vining). Separating pods from the vines and, in the case of shell peas, separating the peas from the pod for delivery to the processor.

Days. Calendar days.

Dry peas. Green peas that have matured to the dry form for use as food, feed, or seed.

FSA. The Farm Service Agency, an agency of the United States Department of Agriculture, or a successor agency.

Final planting date. The date contained in the Special Provisions for the insured crop by which the crop must initially be planted in order to be insured for the full production guarantee.

Good farming practices. The cultural practices generally in use in the county for the crop to make normal progress toward maturity and produce at least the yield used to determine the production guarantee and are those required by the green pea processor contract with the processing company, and recognized by the Cooperative State Research, Education, and Extension Service as compatible with agronomic and weather conditions in the county.

Green peas. Shell type and pod type peas that are grown under a processor contract to be canned or frozen and sold for human consumption.

Harvest. Combining (vining) of the peas.

Interplanted. Acreage on which two or more crops are planted in a manner that does not permit separate agronomic maintenance or harvest of the insured crop.

Irrigated practice. A method of producing a crop by which water is artificially applied during the growing season by appropriate systems and at the proper times, with the intention of providing the quantity of water needed to produce at least the yield used to establish the irrigated production guarantee on the irrigated acreage planted to the insured crop.

Nurse crop (companion crop). A crop planted into the same acreage as another crop, that is intended to be harvested separately, and which is planted to improve growing conditions for the crop with which it is grown.

Peas. Green or dry peas.

Planted acreage. Land in which seed has been placed by a machine appropriate for the insured crop and planting method, at the

correct depth, into a seedbed that has been properly prepared for the planting method and production practice. Peas must initially be placed in rows. Acreage planted in any other manner will not be insurable unless otherwise provided by the Special Provisions or by written agreement.

Pod type. Green peas genetically developed to be eaten without shelling (e.g., snap peas, snow peas, and Chinese peas).

Practical to replant. In lieu of the definition of ''practical to replant'' contained in section 1 of the Basic Provisions, practical to replant is defined as our determination, after loss or damage to the insured crop, based on factors including, but not limited to, moisture availability, condition of the field, time to crop maturity, and marketing window, that replanting the insured crop will allow the crop to attain maturity prior to the calendar date for the end of the insurance period. It will not be considered practical to replant unless the replanted acreage can produce at least 75 percent of the approved yield, and the processor agrees in writing that it will accept the production from the replanted acreage.

Price election. In lieu of the definition of ''Price election'' contained in section 1 of the Basic Provisions, price election is defined as the price per pound stated in the processor contract (contracted price) for the tenderometer reading, grade factor, or sieve size contained in the Special Provisions.

Processor. Any business enterprise regularly engaged in canning or freezing green peas for human consumption, that possesses all licenses and permits for processing green peas required by the state in which it operates, and that possesses facilities, or has contractual access to such facilities, with enough equipment to accept and process contracted green peas within a reasonable amount of time after harvest.

Processor contract. A written agreement between the producer and a processor, containing at a minimum:

(a) The producer's commitment to plant and grow green peas, and to deliver the green pea production to the processor;

(b) The processor's commitment to purchase all the production stated in the processor contract; and

(c) A base contract price.

Multiple contracts with the same processor that specify amounts of production will be considered as a single processor contract unless the contracts are for different types of green peas.

Production guarantee (per acre).—The number of pounds determined by multiplying the approved actual production history yield per acre by the coverage level percentage you elect. For shell type peas, the weight will be determined after shelling.

Replanting. Performing the cultural practices necessary to prepare the land to replace the seed of the damaged or destroyed crop and then replacing the seed in the insured acreage.

Shell type. Green peas genetically developed to be shelled prior to eating, canning or freezing.

Timely planted. Planted on or before the final planting date designated in the Special Provisions for the insured crop in the county.

Written Agreement. A written document that alters designated terms of this policy in accordance with section 14.

2. Unit Division.

For processor contracts that stipulate:

(a) The amount of production to be delivered:

(1) In lieu of the definition of unit in section 1 of the Basic Provisions, a basic unit will consist of all acreage planted to the insured crop in the county that will be used to fulfill the processor contract;

(2) There will be no more than one basic unit for each processor contract;

(3) In accordance with section 12, all production from any basic unit in excess of the amount under contract will be included as production to count if such production is applied to any other basic unit for which the contracted amount has not been fulfilled; and

(4) Optional units will not be established.

(b) The number of acres to be planted:

(1) Unless limited by the Special Provisions, a unit as defined in section 1 of the Basic Provisions (basic unit) may be divided into optional units if, for each optional unit, you meet all the conditions of this section. Basic units may not be divided into optional units on any basis other than as described in this section;

(2) If you do not comply fully with these provisions, we will combine all optional units that are not in compliance with these provisions into the basic unit from which they were formed. We will combine the optional units at any time we discover that you have failed to comply with these provisions. If failure to comply with these provisions is determined to be inadvertent, and the optional units are combined into a basic unit, that portion of the additional premium paid for the optional units that have been combined will be refunded to you;

(3) All optional units you selected for the crop year must be identified on the acreage report for that crop year;

(4) The following requirements must be met for each optional unit:

(i) You must have records, which can be independently verified, of planted acreage and production for each optional unit for at least the last crop year used to determine your production guarantee;

(ii) You must plant the crop in a manner that results in a clear and discernible break in the planting pattern at the boundaries of each optional unit; and

(iii) You must maintain records of marketed production from each optional unit maintained in such a manner that permits us to verify the production from each optional unit, or the production from each unit must be kept separate until loss adjustment is completed by us; and

(5) Each optional unit must meet one or more of the following criteria, as applicable, unless otherwise specified by written agreement:

(i) Optional Units by Section, Section Equivalent, or FSA Farm Serial Number: Optional units may be established if each optional unit is located in a separate legally identified section. In the absence of sections, we may consider parcels of land legally identified by other methods of measure, such as Spanish grants, as the equivalent of sections for unit purposes. In areas that have not been surveyed using sections or their equivalent systems or in areas where such systems exist but boundaries are not readily discernible, each optional unit must be located in a separate farm identified by a single FSA Farm Serial Number.

(ii) *Optional Units on Acreage Including Both Irrigated and Non-Irrigated Practices:* Optional units may be based on irrigated acreage and non-irrigated acreage if both are located in the same section, section equivalent, or FSA Farm Serial Number. To qualify as separate irrigated and non-irrigated optional units, the non-irrigated acreage may not continue into the irrigated acreage in the same rows or planting pattern. The irrigated acreage may not extend beyond the point at which the irrigation system can deliver the quantity of water needed to produce the yield on which the guarantee is based, except the corners of a field in which a center-pivot irrigation system is used will be considered as irrigated acreage if separate acceptable records of production from the corners are not provided. If the corners of a field in which a center-pivot irrigation system is used do not qualify as a separate non-irrigated optional unit, they will be a part of the unit containing the irrigated acreage. Non-irrigated acreage that is not a part of a field in which a center-pivot irrigation system is used may qualify as a separate optional unit provided that all requirements of this section are met.

(iii) *Optional Units on Acreage Including Both Shell Type Green Peas and Pod Type Green Peas:* Optional units may be established based on shell type green peas and pod type green peas. To qualify as separate shell type and pod type optional units, the shell type acreage may not continue into the pod type acreage in the same rows or planting pattern.

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities.

In addition to the requirements of section 3 of the Basic Provisions:

(a) You may select only one price election for all the green peas in the county insured under this policy unless the Special Provisions provide different price elections by type. The percentage of the maximum price election you choose for one type will be applicable to all other types insured under this policy.

(b) The appraised production from bypassed acreage that could have been accepted by the processor will be included when determining your approved yield.

(c) Acreage that is bypassed because it was damaged by an insurable cause of loss will be considered to have a zero yield when determining your approved yield.

4. Contract Changes.

In accordance with section 4 of the Basic Provisions, the contract change date is November 30 preceding the cancellation date.

5. Cancellation and Termination Dates.

In accordance with section 2 of the Basic Provisions, the cancellation and termination dates are:

CANCELLATION AND TERMINATION

State	Dates
Delaware and Maryland	Feb. 15.
All other states	Mar. 15.

6. Report of Acreage.

In addition to the provisions of section 6 of the Basic Provisions, you must provide a copy of all processor contracts to us on or before the acreage reporting date.

7. Insured Crop.

(a) In accordance with section 8 of the Basic Provisions, the crop insured will be all the shell type and pod type green peas in the county for which a premium rate is provided by the actuarial documents:

(1) In which you have a share;

(2) That are grown under, and in accordance with, the requirements of a processor contract executed on or before the acreage reporting date and are not excluded from the processor contract at any time during the crop year; and

(3) That are not (unless allowed by the Special Provisions or by written agreement):

(i) Interplanted with another crop;

(ii) Planted into an established grass or legume; or

(iii) Planted as a nurse crop.

(b) You will be considered to have a share in the insured crop if, under the processor contract, you retain control of the acreage on which the green peas are grown, you are at risk of loss, and the processor contract provides for delivery of green peas under specified conditions and at a stipulated base contract price.

(c) A commercial green pea producer who is also a processor may establish an insurable interest if the following requirements are met:

(1) The producer must comply with these Crop Provisions;

(2) Prior to the sales closing date, the Board of Directors or officers of the processor must execute and adopt a resolution that contains the same terms as an acceptable processor contract. Such resolution will be considered a processor contract under this policy; and

(3) Our inspection reveals that the processing facilities comply with the definition of a processor contained in these Crop Provisions.

8. Insurable Acreage.

In addition to the provisions of section 9 of the Basic Provisions:

(a) Any acreage of the insured crop that is damaged before the final planting date, to the extent that the majority of producers in the area would normally not further care for the crop, must be replanted unless we agree that it is not practical to replant; and

(b) We will not insure any acreage that does not meet the rotation requirements, if applicable, contained in the Special Provisions.

9. Insurance Period.

In lieu of the provisions contained in section 11 of the Basic Provisions, regarding the end of the insurance period, insurance ceases at the earlier of:

(a) The date the green peas:

(1) Were destroyed;

(2) Should have been harvested but were not harvested;

(3) Were abandoned; or

(4) Were harvested;

(b) The date you harvest sufficient production to fulfill your processor contract if the processor contract stipulates a specific amount of production to be delivered;

(c) Final adjustment of a loss; or

(d) September 15 of the calendar year in which the insured green peas would normally be harvested; or

(e) September 30 of the calendar year in which the insured peas would normally be harvested if you provide notice to us that the insured crop will be harvested as dry peas (see section 11(d)).

10. Causes of Loss.

In accordance with the provisions of section 12 of the Basic Provisions:

(a) Insurance is provided only against the following causes of loss that occur during the insurance period:

(1) Adverse weather conditions, including:

(i) Excessive moisture that prevents harvesting equipment from entering the field or that prevents the timely operation of harvesting equipment; and

(ii) Abnormally hot or cold temperatures that cause an unexpected number of acres over a large producing area to be ready for harvest at the same time, affecting the timely harvest of a large number of such acres or the processing of such production is beyond the capacity of the processor, either of which causes the acreage to be bypassed.

(2) Fire;

(3) Insects, but not damage due to insufficient or improper application of pest control measures;

(4) Plant disease but only on acreage not planted to peas the previous crop year. (In certain instances, contained in the Special Provisions or in a written agreement, acreage planted to peas the previous year may be covered. Damage due to insufficient or improper application of disease control measures is not covered);

(5) Wildlife;

(6) Earthquake;

(7) Volcanic eruption; or

(8) Failure of the irrigation water supply, if due to a cause of loss contained in section 10(a)(1) through (7) that occurs during the insurance period.

(b) In addition to the causes of loss excluded by section 12 of the Basic Provisions, we will not insure any loss of production due to:

(1) Bypassed acreage because of:

(i) The breakdown or non-operation of equipment or facilities; or

(ii) The availability of a crop insurance payment. We may deny any indemnity immediately in such circumstance or, if an indemnity has been paid, require you to repay it to us with interest at any time acreage was bypassed due to the availability of a crop insurance payment or;

(2) Your failure to follow the requirements contained in the processor contract.

11. Duties In The Event of Damage or Loss.

In addition to the notices required by section 14 of the Basic Provisions, you must give us notice:

(a) Not later than 48 hours after:

(1) Total destruction of the green peas on the unit; or

(2) Discontinuance of harvest on a unit on which unharvested production remains.

(b) Within 3 days after the date harvest should have started on any acreage that will not be harvested unless we have previously released the acreage. You must also provide acceptable documentation of the reason the acreage was bypassed. Failure to provide such documentation will result in our determination that the acreage was bypassed due to an uninsured cause of loss. If the crop will not be harvested and you wish to destroy the crop, you must leave representative samples of the unharvested crop for our inspection. The samples must be at least 10 feet wide and extend the entire length of each field in each unit. The samples must not be destroyed until the earlier of our inspection or 15 days after notice is given to us;

(c) At least 15 days prior to the beginning of harvest if you intend to claim an indemnity on any unit, or immediately if damage is discovered during the 15 day period or during harvest, so that we may inspect any damaged production. If you fail to notify us and such failure results in our inability to inspect the damaged production, we will consider all such production to be undamaged and include it as production to count. You are not required to delay harvest; and

(d) Prior to the time the green peas would normally be harvested if you intend to harvest the green peas as dry peas.

12. Settlement of Claim.

(a) We will determine your loss on a unit basis. In the event you are unable to provide separate, acceptable production records:

(1) For any optional units, we will combine all optional units for which such production records were not provided; or

(2) For any basic units, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for the units.

(b) In the event of loss or damage covered by this policy, we will settle your claim by:

(1) Multiplying the insured acreage by its respective production guarantee, by type if applicable;

(2) Multiplying each result of section 12(b)(1) by the respective price election, by type if applicable;

(3) Totaling the results of section 12(b)(2) if there are more than one type;

(4) Multiplying the total production to count (see section 12(c)), for each type if applicable, by its respective price election;

(5) Totaling the results of section 12(b)(4) if there are more than one type;

(6) Subtracting the results of section 12(b)(4) from the results of section 12(b)(2) if there is only one type or subtracting the results of section 12(b)(5) from the result of section 12(b)(3) if there are more than one type; and

(7) Multiplying the result of section 12(b)(6) by your share.

For example:

You have a 100 percent share in 100 acres of shell type green peas in the unit, with a guarantee of 4,000 pounds per acre and a price election of $0.09 per pound. You are

only able to harvest 200,000 pounds. Your indemnity would be calculated as follows:

(1) 100 acres × 4,000 pounds = 400,000 pounds guarantee;
(2) 400,000 pounds × $0.09 price election = $36,000.00 value of guarantee;
(4) 200,000 pounds × $0.09 price election = $18,000.00 value of production to count;
(6) $36,000.00 − $18,000.00 = $18,000.00 loss; and
(7) $18,000.00 × 100 percent = $18,000.00 indemnity payment.

You also have a 100 percent share in 100 acres of pod type green peas in the same unit, with a guarantee of 5,000 pounds per acre and a price election of $0.13 per pound. You are only able to harvest 450,000 pounds. Your total indemnity for both shell type and pod type green peas would be calculated as follows:

(1) 100 acres × 4,000 pounds = 400,000 pounds guarantee for the shell type, and 100 acres × 5,000 pounds = 500,000 pounds guarantee for the pod type;
(2) 400,000 pounds guarantee × $0.09 price election = $36,000.00 value of guarantee for the shell type, and 500,000 pounds guarantee × $0.13 price election = $65,000.00 value of guarantee for the pod type;
(3) $36,000.00 + $65,000.00 = $101,000.00 total value of guarantee;
(4) 200,000 pounds × $0.09 price election = $18,000.00 value of production to count for the shell type, and
450,000 pounds × $0.13 = $58,500.00 value of production to count for the pod type;
(5) $18,000.00 + $58,500.00 = $76,500.00 total value of production to count;
(6) $101,000.00 − $76,500.00 = $24,500.00 loss; and
(7) $24,500.00 loss × 100 percent = $24,500.00 indemnity payment.

(c) The total production to count, specified in pounds, from all insurable acreage on the unit will include:

(1) All appraised production as follows:

(i) Not less than the production guarantee for acreage:

(A) That is abandoned;

(B) That is put to another use without our consent;

(C) That is damaged solely by uninsured causes or;

(D) For which you fail to provide production records that are acceptable to us.

(ii) Production lost due to uninsured causes.

(iii) Production on acreage that is bypassed unless the acreage was bypassed due to an insured cause of loss which resulted in production which would not be acceptable under the terms of the processor contract.

(iv) Potential production on insured acreage that you intend to put to another use or abandon, if you and we agree on the appraised amount of production. Upon such agreement, the insurance period for that acreage will end when you put the acreage to another use or abandon the crop. If agreement on the appraised amount of production is not reached:

(A) If you do not elect to continue to care for the crop, we may give you consent to put the acreage to another use if you agree to leave intact, and provide sufficient care for, representative samples of the crop in locations acceptable to us (The amount of production to count for such acreage will be based on the harvested production or appraisals from the samples at the time harvest should have occurred. If you do not leave the required samples intact, or fail to provide sufficient care for the samples, our appraisal made prior to giving you consent to put the acreage to another use will be used to determine the amount of production to count); or

(B) If you elect to continue to care for the crop, the amount of production to count for the acreage will be the harvested production, or our reappraisal if additional damage occurs and the crop is not harvested.

(2) All harvested green pea production from the insurable acreage. The amount of such production will be determined by dividing the dollar amount paid, payable, or which should have been paid under the terms of the processor contract for the quality and quantity of the peas delivered to the processor by the base contract price per pound;

(3) All harvested green pea production from any of your other insurable units that have been used to fulfill your processor contract for this unit; and

(4) All dry pea production from the insurable acreage if you gave notice in accordance with section 11(d) for any acreage you intended to harvest as dry peas. The harvested or appraised dry pea production will be multiplied by 1.667 for shell types and 3.000 for pod types to determine the green pea production equivalent. No adjustment for quality deficiencies will be allowed for dry pea production.

13. Late and Prevented Planting.

Late planting provisions are not applicable to green peas unless allowed by the Special Provisions and you provide written approval from the processor by the acreage reporting date that it will accept the production from the late planted acres when it is expected to be ready for harvest. Prevented planting coverage will be available if contained in the Basic Provisions.

14. Written Agreement.

Terms of this policy that are specifically designated for the use of written agreements may be altered by written agreement in accordance with the following:

(a) You must apply in writing for each written agreement no later than the sales closing date, except as provided in section 14(e);

(b) The application for a written agreement must contain all variable terms of the contract between you and us that will be in effect if the written agreement is not approved;

(c) If approved, the written agreement will include all variable terms of the contract, including, but not limited to, crop type or variety, the guarantee, premium rate, and price election;

(d) Each written agreement will only be valid for one year (if the written agreement is not specifically renewed the following year, insurance coverage for subsequent crop years will be in accordance with the printed policy); and

(e) An application for a written agreement submitted after the sales closing date may be approved if, after a physical inspection of the acreage, it is determined that no loss has occurred and the crop is insurable in accordance with the policy and written agreement provisions.

Signed in Washington, D.C., on October 23, 1997.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 97–30514 Filed 11–19–97; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. 141CE, Special Condition 23–ACE–92]

Special Conditions; Cessna Model 525 Citation Jet Airplane

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued to Rockwell Collins, Inc., 400 Collins Road NE, Cedar Rapids, Iowa 52498 for a Supplemental Type Certificate (STC) on the Cessna Model 525 Citation Jet airplane. This airplane will have novel and unusual design features when compared to the state of technology envisaged in the applicable airworthiness standards. These novel and unusual design features include the installation of electronic displays for which the applicable regulations do not contain adequate or appropriate airworthiness standards for the protection of these systems from the effects of high intensity radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to the airworthiness standards applicable to these airplanes.

EFFECTIVE DATE: The effective date of these special conditions is November 20, 1997. Comments must be received on or before December 22, 1997.

ADDRESSES: Comments may be mailed in duplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, ACE–7, Attention: Rules Docket Clerk, Docket No. 141CE, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. All comments must be marked: Docket No. 141CE. Comments may be inspected in the Rules Docket

weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Ervin Dvorak, Aerospace Engineer, Standards Office (ACE–110), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone (816) 426–6941.

SUPPLEMENTARY INFORMATION:

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety, and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on these special conditions.

Interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the regulatory docket and special condition number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. These special conditions may be changed in light of the comments received. All comments submitted will be available in the rules docket for examination by interested parties, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments, submitted in response to this request, must include a self-addressed and stamped postcard on which the following statement is made: ''Comments to Docket No. 141CE.'' The postcard will be date stamped and returned to the commenter.

Background

On March 26, 1997, Rockwell Collins, Inc., 400 Collins Road NE, Cedar Rapids, Iowa 52498 made an application to the FAA for a Supplemental Type Certificate (STC) for the Cessna Model 525 Citation Jet airplane. The proposed modification incorporates a novel or unusual design feature, such as digital avionics consisting of an electronic flight instrument system (EFIS), that is vulnerable to HIRF external to the airplane.

Type Certification Basis

The type certification basis for the Cessna Model 525 Citation Jet airplane is given in Type Certification Data Sheet No. A1WI plus the following: 14 CFR Part 23, as amended by 23–1 through 23–38, and 23–40; 14 CFR Part 36, effective December 1, 1969, as amended by 36–1 through 36–18; 14 CFR Part 34 effective September 10, 1990; compliance with the Noise Control Act of 1972; Special Condition 23–ACE–55; and Exemption 5759 for type certification utilizing the directional damping criterion of 14 CFR Part 25, § 25.181, in lieu of the damping criterion of § 23.181(b).

Discussion

The FAA may issue and amend special conditions, as necessary, as part of the type certification basis if the Administrator finds that the airworthiness standards, designated according to § 21.101(b), do not contain adequate or appropriate safety standards because of novel or unusual design features of an airplane. Special conditions are prescribed under the provisions of § 21.16 to establish a level of safety equivalent to that established in the regulations. Special conditions are normally issued according to § 11.49, after public notice, as required by §§ 11.28 and 11.29(b), effective October 14, 1980, and become a part of the type certification basis in accordance with § 21.101(b)(2).

Rockwell Collins, Inc. plans to incorporate certain novel and unusual design features into an airplane for which the airworthiness standards do not contain adequate or appropriate safety standards for protection from the effects of HIRF. These features include electronic systems, which are susceptible to the HIRF environment, that were not envisaged by the existing regulations for this type of airplane.

Protection of Systems from High Intensity Radiated Fields (HIRF)

Recent advances in technology have given rise to the application in aircraft designs of advanced electrical and electronic systems that perform functions required for continued safe flight and landing. Due to the use of sensitive solid state advanced components in analog and digital electronics circuits, these advanced systems are readily responsive to the transient effects of induced electrical current and voltage caused by the HIRF. The HIRF can degrade electronic systems performance by damaging components or upsetting system functions.

Furthermore, the HIRF environment has undergone a transformation that was not foreseen when the current requirements were developed. Higher energy levels are radiated from transmitters that are used for radar, radio, and television. Also, the number of transmitters has increased significantly. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling to cockpit-installed equipment through the cockpit window apertures is undefined.

The combined effect of the technological advances in airplane design and the changing environment has resulted in an increased level of vulnerability of electrical and electronic systems required for the continued safe flight and landing of the airplane. Effective measures against the effects of exposure to HIRF must be provided by the design and installation of these systems. The accepted maximum energy levels in which civilian airplane system installations must be capable of operating safely are based on surveys and analysis of existing radio frequency emitters. These special conditions require that the airplane be evaluated under these energy levels for the protection of the electronic system and its associated wiring harness. These external threat levels, which are lower than previously required values, are believed to represent the worst case to which an airplane would be exposed in the operating environment.

These special conditions require qualification of systems that perform critical functions, as installed in aircraft, to the defined HIRF environment in paragraph 1 or, as an option to a fixed value using laboratory tests, in paragraph 2, as follows:

(1) The applicant may demonstrate that the operation and operational capability of the installed electrical and electronic systems that perform critical functions are not adversely affected when the aircraft is exposed to the HIRF environment defined below:

FIELD STRENGTH VOLTS/METER

Frequency	Peak	Average
10–100 KHz	50	50
100–500	60	60
500–2000	70	70
2–30 MHz	200	200
30–70	30	30
70–100	30	30
100–200	150	30
200–400	70	70
400–700	700	80
700–1000	1700	240
1–2 GHz	5000	360
2–4	4500	360
4–6	7200	300
6–8	2000	330
8–12	3500	270
12–18	3500	330
18–40	780	20

or,

(2) The applicant may demonstrate by a system test and analysis that the

electrical and electronic systems that perform critical functions can withstand a minimum threat of 100 volts per meter, peak electrical field strength, from 10 KHz to 18 GHz. When using this test to show compliance with the HIRF requirements, no credit is given for signal attenuation due to installation.

A preliminary hazard analysis must be performed by the applicant, for approval by the FAA, to identify electrical and/or electronic systems that perform critical functions. The term ''critical'' means those functions whose failure would contribute to, or cause, a failure condition that would prevent the continued safe flight and landing of the airplane. The systems identified by the hazard analysis that perform critical functions are candidates for the application of HIRF requirements. A system may perform both critical and non-critical functions. Primary electronic flight display systems, and their associated components, perform critical functions such as attitude, altitude, and airspeed indication. The HIRF requirements apply only to critical functions.

Compliance with HIRF requirements may be demonstrated by tests, analysis, models, similarity with existing systems, or any combination of these. Service experience alone is not acceptable since normal flight operations may not include an exposure to the HIRF environment. Reliance on a system with similar design features for redundancy as a means of protection against the effects of external HIRF is generally insufficient since all elements of a redundant system are likely to be exposed to the fields concurrently.

Conclusion

In view of the design features discussed for the Cessna Model 525 Citation Jet airplane, the following special conditions are issued. This action is not a rule of general applicability and affects only those applicants who apply to the FAA for approval of these features on these airplanes.

The substance of these special conditions has been subject to the notice and public comment procedure in several prior rulemaking actions, for example, the Dornier 228–200 (53 FR 14782, April 26, 1988), the Cessna Model 525 (56 FR 49396, September 30, 1991), and the Beech Model 200, A200, and B200 airplanes (57 FR 1220, January 13, 1992). It is unlikely that additional public comment would result in any significant change from those special conditions already issued and commented on. For these reasons, and because a delay would significantly affect the applicant's installation of the system and certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions without notice. Therefore, these special conditions are being made effective upon publication in the **Federal Register**. However, as previously indicated, interested persons are invited to comment on these special conditions if they so desire.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols

Citation

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g); 40113, 44701, 44702, and 44704; 14 CFR 21.16 and 21.101; and 14 CFR 11.28 and 11.49

Adoption of Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the modified Cessna Model 525 Citation Jet airplane:

1. *Protection of Electrical and Electronic Systems from High Intensity Radiated Fields (HIRF).* Each system that performs critical functions must be designed and installed to ensure that the operations, and operational capabilities of these systems to perform critical functions, are not adversely affected when the airplane is exposed to high intensity radiated electromagnetic fields external to the airplane.

2. For the purpose of these special conditions, the following definition applies: *Critical Functions:* Functions whose failure would contribute to, or cause, a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Kansas City, Missouri on October 28, 1997.

Mary Ellen A. Schutt,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–30495 Filed 11–19–97; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–05–AD; Amendment 39–10207; AD 97–23–17]

RIN 2120–AA64

Airworthiness Directives; Raytheon Aircraft Company 90, 100, 200, and 300 Series Airplanes (Formerly Known as Beech Aircraft Corporation 90, 100, 200, and 300 Series Airplanes)

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to Raytheon Aircraft Company (Raytheon) 90, 100, 200, and 300 series airplanes. This action requires inspecting gray, blue, or clear Ethylene Vinyl Acetate (EVA) tubing near the co-pilot's foot warmer for collapse or deformity. If the tubing is collapsed or deformed, this action requires replacing and re-routing the tubing. This EVA tubing is used on the pneumatic de-ice indicator lines and the pressurization control system pneumatic lines that provide vacuum to the outflow safety valves that depressurize the airplane. This action is the result of several reports of collapsed EVA tubing. The actions specified by this AD are intended to prevent a loss of vacuum to depressurize the airplane cabin, which could result in personal injury to the door operator; and to prevent malfunction of the de-ice indicator system, which could cause the pilot to immediately exit icing conditions.

DATES: Effective December 29, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 29, 1997.

ADDRESSES: Service information that applies to this AD may be obtained from Raytheon Aircraft Company, P.O. Box 85, Wichita, Kansas 67201–0085. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket 97–CE–05–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mike Imbler, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-

Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4147, facsimile (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to Raytheon 90, 100, 200, and 300 series airplanes was published in the **Federal Register** on May 13, 1997, (62 FR 26261). The action proposed to require inspecting the condition and proper routing of the gray, blue, or clear pneumatic pressurization control system tubes and the de-ice indicator pneumatic tubing located forward of the co-pilot's right outboard rudder pedal. If either tube is deformed or collapsed, the proposed action would require replacing the damaged section of tube with new nylon tubing, then re-routing and securing the tubing using aluminum tubing and hose clamps. If there is no evidence of damage to the tubing, the proposed action would only require re-routing and securing the tubing to ensure that it is at least 8 inches away from the discharge opening of the co-pilot's foot warmer outlet. Accomplishment of the proposed action would be in accordance with Raytheon Aircraft Company Mandatory Service Bulletin No. 2676, Issued: January 1997.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Cost Impact

The FAA estimates that 2,515 airplanes in the U.S. registry will be affected by this AD; that it would take approximately 6 workhours per airplane to accomplish the inspection, repair, and re-routing of the tubing; and that the average labor rate is approximately $60 an hour. Parts would be covered under the manufacturer's warranty credit program. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $905,400 or $360 per airplane. The FAA has no way to determine the number of owners/operators of the affected airplanes who may have already accomplished this action.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

97–23–17.—Raytheon Aircraft Company: Amendment 39–10207; Docket No. 97–CE–05–AD.

Applicability: The following models and serial numbered airplanes, certificated in any category:

Models	Serial Nos.
C90 and C90A	LJ–683 through LJ–1463.
E90	LW–177 through LW–347.
F90	LA–1 through LA–236.
H90	LL–1 through LL–61.
A100	B–228 through B–247.
B100	BE–6 through BE–137.
200 and B200	BB–114 through BB–1553.
200C and B200C	BL–1 through BL–72 and BL–124 through BL–140.
200CT and B200CT	BN–1 through BN–4.
200T and B200T	BT–1 through BT–38.
300	FA–1 through FA–230 and FF–1 through FF–19.
B300	FL–1 through FL–154.
B300C	FM–1 through FM–9 and FN–1.
A200 (C–12C)	BC–19 through BC–75 and BD–15 through BD–30.
A200C (UC–12B)	BJ–1 through BJ–66.
A200CT (C–12D/F)	BP–1, BP–22, and BP–24 through BP–63.
A200CT (FWC–12D)	BP–7 through BP–11.
A200CT (RC–12D)	GR–1 through GR–13.
A200CT (RC–12H)	GR–14 through GR–19.
A200CT (RC–12G)	FC–1 through FC–3.
A200CT (RC–12K)	FE–1 through FE–9.
A200CT (RC–12N)	FE–10 through FE–31.
A200CT (RC–12P)	FE–33 and FE–35.
A200CT (RC–12Q)	FE–32, FE–34, and FE–36.
B200C (C–12F)	BL–73 through BL–112, BL–118 through BL–123, and BP–64 through BP–71.
B200C (C–12R)	BW–1 through BW–29.
B200C (UC–12F)	BU–1 through BU–10.
B200C (RC–12F)	BU–11 and BU–12.
B200C (UC–12M)	BV–1 through BV–10.
B200C (RC–12M)	BV–11 and BV–12.
B200CT (FWC–12D)	FG–1 and FG–2.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within the next 200 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished.

To prevent a loss of vacuum to depressurize the airplane cabin, which could result in personal injury to the door operator; and to prevent malfunction of the de-ice indicator system which could cause the pilot to unnecessarily exit icing conditions, accomplish the following:

(a) Inspect for collapse, deformation, and proper routing of the gray, blue, or clear pneumatic pressurization control system tubes and the de-ice indicator pneumatic tubing located forward of the co-pilot's right outboard rudder pedal in accordance with the ACCOMPLISHMENT INSTRUCTIONS section and Figure 1 of the Raytheon Aircraft Company (Raytheon) Mandatory Service Bulletin (SB) No. 2676, Issued: January 1997.

(b) If any of this tubing is deformed or collapsed, prior to further flight, replace the damaged section of tube with new nylon tubing, then use aluminum tubing and hose clamps to secure and re-route the tubing at least 8 inches away from the discharge opening of the co-pilot's foot warmer outlet in accordance with the ACCOMPLISHMENT INSTRUCTIONS section and Figure 2 of the Raytheon Mandatory SB No. 2676, Issued: January 1997.

(c) If there is no evidence of damage to the tubing, prior to further flight, re-route and secure the tubing as specified in paragraph (b) of this AD in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of the Raytheon Mandatory SB No. 2676, Issued: January 1997.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from Wichita Aircraft Certification Office.

(f) The inspections, modifications, and replacements required by this AD shall be done in accordance Raytheon Aircraft Company Mandatory Service Bulletin No. 2676, Issued: January 1997. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Raytheon Aircraft Company, P.O. Box 85, Wichita, Kansas 67201–0085. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment (39–10207) becomes effective on December 29, 1997.

Issued in Kansas City, Missouri, on November 7, 1997.

Larry D. Malir,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–30057 Filed 11–19–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–198–AD; Amendment 39–10210; AD 97–24–03]

RIN 2120–AA64

Airworthiness Directives; Dassault Model Falcon 2000 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Dassault Model Falcon 2000 series airplanes, that requires a revision to the Limitations section of the FAA-approved Airplane Flight Manual (AFM) to limit the allowed loads in the baggage compartment aft of the center baggage net. This AD also requires replacement of the center baggage net in the baggage compartment with a net having reinforced straps, which terminates the requirement for the AFM revision. This amendment is prompted by a report indicating that the center baggage net cannot sustain design loads in the event of an accident. The actions specified by this AD are intended to prevent injury to passengers, as a result of inadequate breaking strength of the baggage net, in the event of an accident.

DATES: Effective December 26, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 26, 1997.

ADDRESSES: The service information referenced in this AD may be obtained from Dassault Falcon Jet Corporation, Teterboro Airport, P.O. Box 2000, South Hackensack, New Jersey 07606.

This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Dassault Model Falcon 2000 series airplanes was published in the **Federal Register** on September 15, 1997 (62 FR 48187). That action proposed to require a revision to the Limitations section of the FAA-approved Airplane Flight Manual (AFM) to limit the allowed loads in the baggage compartment aft of the center baggage net. The AD also proposed to require replacement of the center baggage net in the baggage compartment with a net having reinforced straps, which would terminate the requirement for the AFM revision.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 20 Model Falcon 2000 series airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the replacement, and that the average labor rate is $60 per work hour. Required parts will cost approximately $520 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $11,600, or $580 per airplane.

It will take approximately 1 work hour per airplane to accomplish the AFM revision, at an average labor rate of $60 per work hour. Based on these figures, the cost impact on U.S. operators of the AFM revision required by this AD is estimated to be $1,200, or $60 per airplane.

Based on the above figures, the total cost impact on U.S. operators of the replacement and AFM revision is estimated to be $12,800, or $640 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish

those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

97–24–03 Dassault Aviation: Amendment 39–10210. Docket 97–NM–198–AD.

Applicability: Model Falcon 2000 airplanes, serial numbers 2 through 31 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent injury to passengers as a result of inadequate breaking strength of the baggage net, accomplish the following:

(a) Within 60 days after the effective date of this AD, revise the Limitations section of the FAA-approved Airplane Flight Manual (AFM) by inserting into the AFM a copy of Falcon 2000 AFM Temporary Change No. 31 (undated).

Note 2: The revision of the AFM required by this paragraph may be accomplished by inserting a copy of Falcon 2000 AFM Temporary Change No. 31 in the AFM. When this temporary change has been incorporated into general revisions of the AFM, the general revisions may be inserted in the AFM, provided that the information contained in the general revisions is identical to that specified in Falcon 2000 AFM Temporary Change No. 31.

(b) Within 6 months after the effective date of this AD, replace the center baggage net in the baggage compartment with a net having reinforced straps, in accordance with Dassault Service Bulletin F2000–76 (F2000–25–2), dated December 11, 1996. After this replacement is accomplished, the AFM revision required by paragraph (a) of this AD may be removed from the AFM.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The actions shall be done in accordance with Falcon 2000 Airplane Flight Manual Temporary Change No. 31 (undated), and Dassault Service Bulletin F2000–76 (F2000–25–2), dated December 11, 1996. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Dassault Falcon Jet Corporation, Teterboro Airport, P.O. Box 2000, South Hackensack, New Jersey 07606. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed French airworthiness directive 96–291–002(B), dated December 4, 1996.

(f) This amendment becomes effective on December 26, 1997.

Issued in Renton, Washington, on November 10, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–30301 Filed 11–19–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Clopidol and Bacitracin Zinc

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Alpharma Inc. The ANADA provides for using approved clopidol and bacitracin zinc Type A medicated articles to make Type C medicated broiler chicken feeds used for prevention of coccidiosis, improved feed efficiency, and increased rate of weight gain.

EFFECTIVE DATE: November 20, 1997.

FOR FURTHER INFORMATION CONTACT: Jeffrey M. Gilbert, Center for Veterinary Medicine (HFV–128), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1602.

SUPPLEMENTARY INFORMATION: Alpharma Inc., One Executive Dr., P.O. Box 1399, Fort Lee, NJ 07024, is sponsor of ANADA 200–218 that provides for combining approved clopidol and bacitracin zinc Type A medicated articles to make Type C medicated feeds for broilers containing clopidol 113.5 grams per ton (g/t) and bacitracin zinc 5 to 25 g/t. The Type C medicated feed is used as an aid in the prevention of coccidiosis caused by *Eimeria tenella*, *E. necatrix*, *E. acervulina*, *E. brunetti*, *E. mivati*, and *E. maxima*, and for increased rate of weight gain and improved feed efficiency.

Alpharma Inc.'s ANADA 200–218 is approved as a generic copy of Rhone-

Poulenc, Inc.'s NADA 49–934. The ANADA is approved as of November 20, 1997 and the regulations are amended in § 558.175 (21 CFR 558.175) to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In addition, § 558.175 is amended to reflect the approval by redesignating paragraph (c) as paragraph (d), by reserving paragraph (c), and by amending newly redesignated paragraph (d)(1)(iv)(*b*).

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

§ 558.175 [Amended]

2. Section 558.175 *Clopidol* is amended by redesignating paragraph (c) as paragraph (d), by reserving paragraph (c), and in newly redesignated paragraph (d)(1)(iv)(*b*) by removing ''No. 000061'' and adding in its place ''Nos. 000061 and 046573''.

Dated: October 30, 1997.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 97–30408 Filed 11–19–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Monensin and Bacitracin Zinc With Roxarsone

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Alpharma Inc. The ANADA provides for using approved monensin, bacitracin zinc, and roxarsone Type A medicated articles to make Type C medicated broiler chicken feeds used for prevention of coccidiosis and increased rate of weight gain, or for prevention of coccidiosis and improved feed efficiency and improved pigmentation.

EFFECTIVE DATE: November 20, 1997.

FOR FURTHER INFORMATION CONTACT: Jeffrey M. Gilbert, Center for Veterinary Medicine (HFV–128), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1602.

SUPPLEMENTARY INFORMATION: Alpharma Inc., One Executive Dr., P.O. Box 1399, Fort Lee, NJ 07024, is sponsor of ANADA 200–211 that provides for combining approved monensin, bacitracin zinc, and roxarsone Type A medicated articles to make Type C medicated broiler feeds containing: Monensin 90 to 110 grams per ton (g/t) and bacitracin zinc 10 g/t with roxarsone 15 g/t for prevention of coccidiosis caused by *Eimeria tenella, E. necatrix, E. acervulina, E. brunetti, E. mivati,* and *E. maxima,* and for increased rate of weight gain, or; monensin 90 to 110 g/t and bacitracin zinc 4 to 50 g/t with roxarsone 15 to 45.4 g/t for prevention of coccidiosis caused by *E. tenella, E. necatrix, E. acervulina, E. brunetti, E. mivati,* and *E. maxima,* and for improved feed efficiency and improved pigmentation by enhancing carotenoid and xanthophyll utilization.

ANADA 200–211, sponsored by Alpharma Inc., is approved as a generic copy of Hoffmann-La Roche's NADA 123–154. The ANADA is approved as of November 20, 1997 and the regulations are amended in 21 CFR 558.355(f)(1) to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and § 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under the authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

§ 558.355 [Amended]

2. Section 558.355 *Monensin* is amended in paragraphs (f)(1)(xv)(*b*) and (f)(1)(xvi)(*b*) by removing ''No. 000004'' and adding in its place ''Nos. 000004 and 046573''.

Dated: November 7, 1997.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 97–30483 Filed 11–19–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 357

[Department of the Treasury Circular, Public Debt Series, No. 2–86]

Regulations Governing Book-Entry Treasury Bonds, Notes, and Bills; Determination Regarding State Statutes

AGENCY: Bureau of the Public Debt, Fiscal Service, Treasury.

ACTION: Determination of substantially identical state statutes.

SUMMARY: The Department of the Treasury is announcing that it has reviewed the statutes of 13 states which have recently enacted laws adopting Revised Article 8 of the Uniform Commercial Code—Investment Securities (''Revised Article 8'') and determined that they are substantially identical to the uniform version of Revised Article 8 for purposes of interpreting the rules in 31 CFR Part 357, Subpart B (the ''TRADES'' regulations). Therefore, that portion of the TRADES rule requiring application of Revised Article 8 if a state has not adopted Revised Article 8 will no longer be applicable for those 13 states.

EFFECTIVE DATE: November 20, 1997.

FOR FURTHER INFORMATION CONTACT: Sandy Dyson, Attorney-Advisory, (202) 219–3320, or Cynthia E. Reese, Deputy Chief Counsel, (202) 219–3320.

SUPPLEMENTARY INFORMATION: On August 23, 1996, the Department published a final rule to govern securities held in the commercial book-entry system, now referred to as the Treasury/Reserve Automated Debt Entry System (''TRADES'') (61 FR 43626).

In the commentary to the final regulations, Treasury stated that for the 28 states that had by then adopted Revised Article 8, the versions enacted were ''substantially identical'' to the uniform version for purposes of the rule. Therefore, for those states, that portion of the TRADES rule requiring application of Revised Article 8 was not invoked. Treasury also indicated in the commentary that as additional states adopt Revised Article 8, notice would be provided in the **Federal Register** as to whether the enactments are substantially identical to the uniform version so that the federal application of Revised Article 8 would no longer be in effect for those states. Treasury adopted this approach in an attempt to provide certainty in application of the rule in response to public comments. Treasury published such notices with respect to California (62 FR 26, January 2, 1997) and the District of Columbia (62 FR 34010, June 18, 1997). 31 CFR Part 357, Appendix B, the TRADES Commentary also was amended by final rule (62 FR 43283, August 13, 1997) to update the list of states that have enacted Revised Article 8 statutes which Treasury determined to be substantially identical to the uniform version.

This notice addresses the recent adoption of Article 8 by the following 13 states: Delaware, Hawaii, Maine, Missouri, Montana, Nevada, New Jersey, New York, North Carolina, North Dakota, Ohio, Tennessee and Puerto Rico. A ''state'' is defined in the regulations as including Puerto Rico.

Treasury has reviewed the 13 state enactments and has concluded all of them are substantially identical to the uniform version of Revised Article 8. Accordingly, if either § 357.10(b) or § 357.11(b) directs a person to Delaware, Hawaii, Maine, Missouri, Montana, Nevada, New Jersey, New York, North Carolina, North Dakota, Ohio, Tennessee and Puerto Rico, the provisions of §§ 357.10(c) and 357.11(d) of the TRADES rule are not applicable. This means that a total of 43 states (including D.C. and Puerto Rico) have enacted Revised Article 8 that have been either: (1) the subject of notices by Treasury stating that the laws are ''substantially identical'' to the uniform version for purposes of the TRADES regulations; or (2) included in the list of states appearing in a footnote to the Commentary section in Appendix B of the TRADES regulations.

In addition, Treasury has reviewed the recent enactment of Revised Article 8 by Connecticut. Because we understand that Connecticut will likely be acting within the next year to amend the statute that was passed, we make no determination at this time with respect whether the statute passed is ''substantially identical'' to the uniform version for purposes of the rule.

Dated: November 12, 1997.

Richard L. Gregg,

Commissioner of the Public Debt.

[FR Doc. 97–30432 Filed 11–19–97; 8:45 am]

BILLING CODE 4810–39–M

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 701

[Secretary of the Navy Instruction 5211.5]

Department of the Navy Privacy Program

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending a system of records notice identifier for an exempt system of records at 32 CFR part 701, subpart G. This action is needed because the system identifier for the notice was previously amended on July 22, 1997, at 62 FR 39225. The amendment changed the system of records notice identifier from N01000–4 to N01000–5. This rule ensures that the system identifier for the rule and the notice are the same.

EFFECTIVE DATE: November 20, 1997.

FOR FURTHER INFORMATION CONTACT: Mrs. Doris Lama at (202) 685–6545 or DSN 325–6545.

SUPPLEMENTARY INFORMATION:

Executive Order 12866. It has been determined that this Privacy Act rule for the Department of Defense does not constitute 'significant regulatory action'. Analysis of the rule indicates that it does not have an annual effect on the economy of $100 million or more; does not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; does not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; does not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866 (1993).

Regulatory Flexibility Act. It has been determined that this Privacy Act rule for the Department of Defense does not have significant economic impact on a substantial number of small entities because it is concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Paperwork Reduction Act. It has been determined that this Privacy Act rule for the Department of Defense imposes no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

The Department of the Navy is amending a system of records notice identifier for an exempt system of records at 32 CFR part 701, subpart G. This action is needed because the system identifier for the notice was previously amended on July 22, 1997, at 62 FR 39225. The amendment changed the system of records notice identifier from N01000–4 to N01000–5. This rule ensures that the system identifier for the rule and the notice are the same.

List of Subjects in 32 CFR Part 701, Subpart G

Privacy.

1. The authority citation for 32 CFR part 701, Subpart G continues to read as follows:

Authority: Pub. L. 93–579, 88 Stat. 1896 (5 U.S.C. 552a).

2. Section 701.118, is amended by revising paragraph (r) introductory text as follows:

§ 701.118 Exemptions for specific Navy record systems.

* * * * *

(r) *System Identifier and Name:* N01000–5, Naval Clemency and Parole Board Files.

* * * * *

Dated: November 14, 1997.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–30418 Filed 11–19–97; 8:45 am]

BILLING CODE 5000–04–F

POSTAL SERVICE

39 CFR Part 4

Board of Governors Bylaws

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The Board of Governors of the United States Postal Service has approved an amendment to its bylaws. The amendment adjusts provisions concerning the office of the Chief Postal Inspector in light of statutory amendments enacted by Public Law 100–504.

EFFECTIVE DATE: November 20, 1997.

FOR FURTHER INFORMATION CONTACT: Thomas J. Koerber, (202) 268–4800.

SUPPLEMENTARY INFORMATION: The Board of Governors of the Postal Service has amended its bylaw provisions concerning the office of Chief Postal Inspector. Under former provisions of the Inspector General Act, the Chief Postal Inspector served as the Inspector General for the Postal Service. The law specifically required the concurrence of the Governors for a transfer or removal of the Chief Inspector. Public Law 100–504 created an independent Inspector General for the Postal Service, and revised the language governing the Chief Postal Inspector. As now codified in 39 U.S.C. 204, the law currently requires notice to the Governors and Congress but does not expressly require the Governors' concurrence. At its meeting on November 3, 1997, the Board revised sections 4.5 and 4.6 of its bylaws conforming them to the language of the statute. Section 4.6, dealing separately with the Chief Postal Inspector, is removed, and provisions concerning the appointment and removal of the Chief Inspector in line with 39 U.S.C. 204 are transferred to section 4.5.

List of Subjects in 39 CFR Part 4

Administrative practice and procedure, Organization and functions (Government agencies), Postal Service.

Accordingly, 39 CFR Part 4 is amended as follows:

PART 4—OFFICERS (ARTICLE IV)

1. The authority citation for Part 4 is revised to read as follows:

Authority: 39 U.S.C. 202–205, 401(2), (10), 402, 1003, 3013.

2–3. Section 4.5 is revised to read as follows:

§ 4.5 Assistant Postmasters General, General Counsel, Judicial Officer, Chief Postal Inspector.

There are within the Postal Service a General Counsel, a Judicial Officer, a Chief Postal Inspector, and such number of officers, described in 39 U.S.C. 204 as Assistant Postmasters General, whether so denominated or not, as the Board authorizes by resolution. These officers are appointed by, and serve at the pleasure of, the Postmaster General. The Chief Postal Inspector shall report to, and be under the general supervision of, the Postmaster General. The Postmaster General shall promptly notify the Governors and both Houses of Congress in writing if he or she removes the Chief Postal Inspector or transfers the Chief Postal Inspector to another position or location within the Postal Service, and shall include in any such notification the reasons for such removal or transfer.

§ 4.6 [Removed]

4. Section 4.6 is removed.

§ 4.7 [Redesignated as § 4.6]

5. Section 4.7 is redesignated as § 4.6.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 97–30412 Filed 11–19–97; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–5925–4]

Final Determination To Extend Deadline for Promulgation of Action on Section 126 Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is extending by a second one-month period the deadline for taking final action on petitions that eight States have submitted to require EPA to make findings that sources upwind of those States contribute significantly to nonattainment problems in those States. Under the Clean Air Act (CAA or Act), EPA is authorized to grant this time extension if EPA determines that the extension is necessary, among other things, to meet the purposes of the Act's rulemaking requirements. By this notice, EPA is making that determination. The eight States that have submitted the petitions are Connecticut, Maine, Massachusetts, New Hampshire, New York, Pennsylvania, Rhode Island, and Vermont.

EFFECTIVE DATE: This action is effective as of November 14, 1997.

FOR FURTHER INFORMATION CONTACT: Howard J. Hoffman, Office of General Counsel, MC–2344, 401 M St. SW, Washington, D.C. 20460, (202) 260–5892.

SUPPLEMENTARY INFORMATION:

I. Background

Today's action follows closely EPA's final action taken by notice dated October 22, 1997 (62 FR 54769). Familiarity with that document is assumed, and background information in that document will not be repeated here.

In the October 22, 1997 document, EPA extended by one month, pursuant to its authority under CAA section 307(d)(10), the time frame for taking final action on petitions submitted by eight states under CAA section 126. These eight states are Connecticut, Maine, Massachusetts, New Hampshire, New York, Pennsylvania, Rhode Island, and Vermont. By these petitions, the eight states have asked EPA to make findings that major stationary sources in upwind states emit in violation of the prohibition of CAA section 110(a)(2)(D), by contributing significantly to nonattainment problems in the petitioning States.

EPA received the petitions on August 14–15, 1997. Under section 126(b), for each petition, EPA must make the requested finding, or deny the petition, within 60 days of receipt of the petition. As indicated in the October 22, 1997 document, EPA has the authority to extend the deadline for up to six months, under CAA section 307(d)(10). By the October 22, 1997 document, EPA extended the deadline for one month, to November 14, 1997, and further indicated that EPA was reserving its option to extend the period by all or part of the remaining five months of the six-month extension period.

EPA is today extending the deadline for an additional one month, to December 14, 1997. EPA's reasons are identical to those articulated in the October 22, 1997 document. In the October 22, 1997 document, EPA explained the basis for the first one-month extension as follows:

In accordance with section 307(d)(10), EPA is today determining that the 60-day period afforded by section 126(b) is not adequate to allow the public and the agency adequate opportunity to carry out the purposes of the section 307(d) procedures for developing an adequate proposal on whether the sources identified in the section 126 petitions contribute significantly to nonattainment problems downwind, and, further, to allow public input into the promulgation of any controls to mitigate or eliminate those contributions. The determination of whether upwind emissions contribute significantly to downwind nonattainment areas is highly complex. The NO_X SIP call, which proposes a somewhat comparable determination, relied on extensive computer modeling of air quality emissions and the ambient impacts therefrom in the large geographic region of the eastern half of the United States. This modeling was developed over a two-year period. It reflected the input of EPA, the 37 states east of the Rockies as well as numerous industry and citizen groups, all of whom participated in the OTAG. Moreover, EPA is allowing a 120-day comment period on the NO_X SIP call proposal, and expects to take final action on the NO_X SIP call in September 1998, some 11 months after the date of proposal.

In acting on the section 126 petitions, EPA must make determinations that, generally, are at least as complex as those required for the NO_X SIP call, and EPA must do so for sources throughout the eastern half of the United States. Moreover, if EPA determines that the petitions should be granted, EPA must promulgate appropriate controls for the affected sources.

EPA is in the process of determining what would be an appropriate schedule for action on the section 126 petitions, in light of the complexity of the required determinations and the usefulness of coordinating generally with the procedural path for the NO_X SIP call. It is imperative that this schedule (i) afford EPA adequate time to prepare a document that clearly elucidates the issues so as to facilitate public comment, as well as (ii) afford the public adequate time to comment.

EPA is continuing to discuss an appropriate schedule with the section 126 petitioners and other interested parties. Accordingly, EPA concludes today, as it did in the October 22, 1997 document, that extending the date for action on the section 126 petitions for another one month is necessary to determine the appropriate overall schedule for action, as well as to continue to develop the technical analysis needed to develop a proposal.

EPA's action of October 22, 1997, erroneously indicated that the extended deadline for six of the States—Connecticut, Maine, New Hampshire, New York, Pennsylvania, and Vermont—would be November 15, 1997. Because the initial 60-day period for EPA action on the 126 petitions submitted by these states expired on October 14, 1997, the first one-month extension would extend the deadline to November 14, 1997. EPA is today correcting that error, although today's action, which further extends the deadline, makes this error irrelevant.

As EPA indicated in the October 22, 1997 document, EPA, even with today's action, continues not to use the entire six months provided under section 307(d)(10) for the extension. EPA continues to reserve the right to apply the remaining four months, or a portion thereof, as an additional extension, if necessary, immediately following the conclusion of the one-month period, or to apply the remaining time to the period following EPA's proposed rulemaking.

II. Final Action

A. Rule

Today, EPA is determining, under CAA section 307(d)(10), that a second one-month period is necessary to assure the development of an appropriate schedule for rulemaking on the section 126 petitions, which schedule would allow EPA adequate time to prepare a notice for proposal that will best facilitate public comment, as well as allow the public sufficient time to comment. Accordingly, EPA is granting a one-month extension to the time for rulemaking on the section 126 petitions. Under this extension, the date for action on each of the section 126 petitions is December 14, 1997.

B. Notice-and-Comment Under the Administrative Procedures Act (APA)

This document is a final agency action, but may not be subject to the notice-and-comment requirements of the APA, 5 U.S.C. 553(b). EPA believes that because of the limited time provided to make a determination that the deadline for action on the section 126 petitions should be extended, Congress may not have intended such a determination to be subject to notice-and-comment rulemaking. However, to the extent that this determination is subject to notice-and-comment rulemaking, EPA invokes the good cause exception pursuant to the APA, 5 U.S.C. 553(b)(3)(B). Providing notice and comment would be impracticable because of the limited time provided for making this determination, and would be contrary to the public interest because it would divert agency resources from the critical substantive review of the section 126 petitions.

C. Effective Date Under the APA

Today's action will be effective on November 14, 1997. Under the APA, 5 U.S.C. 553(d)(3), agency rulemaking may take effect before 30 days after the date of publication in the **Federal Register** if the agency has good cause to mandate an earlier effective date. Today's action—a deadline extension—must take effect immediately because its purpose is to move back by one month the November 14, 1997 deadlines for the section 126 petitions. Moreover, EPA intends to use immediately the one-month extension period to continue to develop an appropriate schedule for ultimate action on the section 126 petitions, and to continue to develop the technical analysis needed to develop the notice of proposed rulemaking. These reasons support an effective date prior to 30 days after the date of publication.

D. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

E. Unfunded Mandates

Under the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1501 *et seq.*, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector or to State, local, or tribal governments in the aggregate. In addition, before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, EPA must have developed a small government agency plan. EPA has determined that these requirements do not apply to today's action because this rulemaking (i) is not a Federal mandate—rather, it simply extends the date for EPA action on a rulemaking; and (ii) contains no regulatory requirements that might significantly or uniquely affect small governments.

F. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 600 *et seq.*, EPA must propose a regulatory flexibility analysis assessing the impact on small entities of any rule subject to the notice-and-comment rulemaking requirements. Because this action is exempt from such

requirements, as described above, it is not subject to RFA.

G. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A), added by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), EPA submitted, by the date of publication of this rule, a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2), as amended.

H. Paperwork Reduction Act

This rule does not contain any information collection requirements which require OMB approval under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*)

I. Judicial Review

Under CAA section 307(b)(1), a petition to review today's action may be filed in the Court of Appeals for the District of Columbia within 60 days of November 20, 1997.

Dated: November 14, 1997.

Carol M. Browner,

Administrator.

[FR Doc. 97–30520 Filed 11–19–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

Clean Air Act Promulgation of Extension of Attainment Date for the Portland, Maine, Moderate Ozone Nonattainment Area

CFR Correction

In Title 40 of the Code of Federal Regulations, parts 81 to 85, revised as of July 1, 1997, make the following correction:

On page 180, in § 81.320, in the table under the heading ''Maine—Ozone'', footnote 2 is corrected to read ''Attainment date extended to November 15, 1997.''.

BILLING CODE 1505–01–D

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AD14

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for Two Tidal Marsh Plants—Cirsium hydrophilum var. hydrophilum (Suisun Thistle) and Cordylanthus mollis ssp. mollis (Soft Bird's-Beak) From the San Francisco Bay Area of California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) determines endangered status pursuant to the Endangered Species Act of 1973, as amended (Act), for two plants—*Cirsium hydrophilum* var. hydrophilum (Suisun thistle) and *Cordylanthus mollis* ssp. *mollis* (soft bird's-beak). These species are restricted to salt and brackish tidal marshes within the San Francisco Bay area in northern California. Habitat conversion, water pollution, changes in salinity, indirect effects of urbanization, mosquito abatement activities (including off-road vehicle use), competition with non-native vegetation, insect predation, erosion, and other human-caused actions threaten these two species. This rule implements the Federal protection and recovery provisions afforded by the Act for these plants.

EFFECTIVE DATE: December 22, 1997.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 3310 El Camino, Suite 130, Sacramento, California 95821–6340.

FOR FURTHER INFORMATION CONTACT: Kirsten Tarp (telephone 916/979–2120) and Matthew D. Vandenberg (telephone 916/979–2752), staff biologists at the Sacramento Fish and Wildlife Office (see **ADDRESSES** section); FAX 916/979–2723.

SUPPLEMENTARY INFORMATION:

Background

Cirsium hydrophilum var. *hydrophilum* (Suisun thistle) and *Cordylanthus mollis* ssp. *mollis* (soft bird's-beak) occur in salt and brackish tidal marshes fringing San Pablo and Suisun Bays in the San Francisco Bay area of northern California. Since 1850, this habitat has been drastically reduced. Approximately 15 percent, or 12,142 hectares (ha) (30,000 acres), of the historical tidal marshland habitat within the San Francisco Bay area remains (Dedrick 1989).

With the exception of the San Francisco Bay area, the mountainous coast of California and the narrow continental shelf provide few areas that are suitable for tidal marsh development (MacDonald 1990). Coastal salt marshes are found along sheltered margins of shallow bays, estuaries, or lagoons, in low lying areas that are subject to periodic inundation by salt water. Brackish marshes occur at the interior margins of coastal bays, estuaries, or lagoons where fresh water sources (streams and rivers) enter salt marshes. Brackish marshes are similar to salt marshes but differ in the degree of water and soil salinity. Brackish marshes are less saline than salt marshes. Salinity levels vary with time, tides, and the amount of freshwater inflow. Vegetation communities in salt and brackish marshes often occur in distinct zones, depending on the frequency and length of tidal flooding. *Cirsium hydrophilum* var. *hydrophilum* and *Cordylanthus mollis* ssp. *mollis* are restricted to a narrow tidal band, typically in higher elevational zones within larger tidal marshes that have fully developed tidal channel networks. These plants usually do not occur in smaller fringe tidal marshes that are generally less than 100 meters (m) (300 feet (ft)) in width, or in non-tidal areas.

Discussion of the Two Species

Asa Gray (1888) originally described *Cirsium hydrophilum* var. *hydrophilum* as *Cnicus breweri* var. *vaseyi.* Subsequent authors treated the taxon as *Carduus hydrophilus* (Greene 1892), *Cirsium hydrophilum* (Jepson 1901), and *Cirsium vaseyi* var. *hydrophilum* (Jepson 1925). John Thomas Howell (1959) concluded that Jepson's *Cirsium hydrophilum* and *Cirsium vaseyi* of the Mt. Tamalpais area in Marin County, California are varieties of a single species, *Cirsium hydrophilum*. According to the rules for botanical nomenclature, when a new variety is described in a species not previously divided into intraspecific taxa, an autonym (automatically created name) is designated. In this case, the autonym is *Cirsium hydrophilum* var. *hydrophilum*.

Cirsium hydrophilum var. *hydrophilum* is a perennial herb in the aster family (Asteraceae). Slender, erect stems 1.0 to 1.5 m (3.0 to 4.5 ft) tall are well branched above. The spiny leaves are deeply lobed. The lower leaves have ear-like basal lobes; the upper leaves are

reduced to narrow strips with strongly spine-toothed margins. Pale lavender-rose flower heads, 2.0 to 2.5 centimeters (cm) (1 inch (in.)) long, occur singly or in loose groups. The bracts of the flower heads have a distinct green, glutinous ridge on the back that distinguishes *Cirsium hydrophilum* var. *hydrophilum* from other *Cirsium* species in the area. *Cirsium hydrophilum* var. *hydrophilum* flowers between July and September.

Cirsium hydrophilum var. *hydrophilum* is restricted to Suisun Marsh in Solano County. In 1975, the plant was reported as possibly extinct because it had not been collected for about 15 years. Extensive surveys found the thistle at two locations within Suisun Marsh (Brenda Grewell, California Department of Water Resources (CDWR), pers. comm. 1993), however, unoccupied suitable habitat for *Cirsium hydrophilum var. hydrophilum* exists outside these sites in the upper reaches of tidal marshes in Solano County. Collectively, the occurrences of *Cirsium hydrophilum* var. *hydrophilum* total a few thousand individuals (Brenda Grewell, pers. comm. 1993) occupying a total area of less than 1 acre. *Cirsium hydrophilum* var. *hydrophilum* grows in the upper reaches of tidal marshes associated with *Typha angustifolia* (narrow-leaf cattail), *Scirpus americanus* (Olney's bulrush), *Juncus balticus* (Baltic rush), and *Distichlis spicata* (saltgrass). One population is found on State land under the jurisdiction of the California Department of Fish and Game (CDFG) and another population is on Solano County Farmland and Open Space Foundation lands. No active management is occurring at either location (Neil Havlik, Solano County Farmland and Open Space Foundation, pers. comm. 1993; Ann Howald, CDFG, pers. comm. 1993). Habitat conversion and fragmentation, indirect effects from urban development, increased salinity, projects that alter the natural tidal regime, mosquito abatement activities, and competition with non-native plants, threaten this taxon. The highly restricted distribution of *Cirsium hydrophilum* var. *hydrophilum* increases its susceptibility to catastrophic events such as pest outbreaks, severe drought, oil spills, or other natural or human caused disasters.

Charles Wright collected the type specimen of *Cordylanthus mollis* ssp. *mollis* in November 1855, on Mare Island in San Francisco Bay. Asa Gray (1868) published the original description, using the name *Cordylanthus mollis*. Later botanists treated the taxon as *Adenostegia mollis* (Greene 1891) and *Chloropyron molle* (Heller 1907). Tsan-Iang Chuang and Larry Heckard (1973) treated *Cordylanthus mollis* and *Cordylanthus hispidus* as subspecies of a single species (*Cordylanthus mollis*) with *Cordylanthus mollis* ssp. *mollis* recognized as the autonym.

Cordylanthus mollis ssp. *mollis* is an annual herb of the snapdragon family (Scrophulariaceae) that grows 25 to 40 cm (10 to 16 in.) tall. It is sparingly branched from the middle and above. *Cordylanthus mollis* ssp. *mollis* is a hemiparasite (i.e., partially parasitic) that extracts water and nutrients by attaching enlarged root structures to the roots of other plants (Chuang and Heckard 1971). The foliage is grayish-green (often tinged a deep red) and hairy. The oblong to lance-shaped leaves are 1.0 to 2.5 cm (0.4 to 1.0 in.) long, the lower leaves entire and the upper with one to three pairs of leaf lobes. The inflorescence consists of spikes 5 to 15 cm (2 to 6 in.) long. A floral bract with two to three pairs of lobes occurs immediately below each inconspicuous white or yellowish-white flower. The flowers have only two functional stamens. The narrow ovoid seed capsule is 6 to 10 millimeters (mm) (0.2 to 0.4 in.) long and bears 20 to 30 dark brown seeds. Flowering occurs between July and September. *Cordylanthus mollis* ssp. *mollis* is distinguished from another *Cordylanthus* found nearby (*C. maritimus* ssp. *palustris*) by its two functional stamens (*C. maritimus* ssp. *palustris* has four) and by its bracts with two to three pairs of lateral lobes (*C. maritimus* ssp. *palustris* has a pair of short teeth on the floral bracts). *Cordylanthus mollis* ssp. *mollis* is closely related to *Cordylanthus mollis* ssp. *hispidus* and can be differentiated most consistently from *Cordylanthus mollis* ssp. *hispidus* on spike length and seed size.

Cordylanthus mollis ssp. *mollis* is found predominantly in the upper reaches of salt grass-pickleweed marshes at or near the limits of tidal action (Stromberg 1986). It is associated with *Salicornia virginica* (Virginia glasswort), *Distichlis spicata, Jaumea carnosa* (fleshy jaumea), *Frankenia salina* (alkali heath), and *Triglochin maritima* (arrow-grass) (Stromberg 1986). There have been 21 reported locations of *Cordylanthus mollis* ssp. *mollis*. Two sites, Denverton and Berkeley, were erroneous locations. Five sites (Mare Island, Martinez, Burdell Station, Bentley Wharf, and Antioch Bridge) have been extirpated by habitat loss or modification. Five other sites surveyed in 1993 no longer had the plants, although some potential habitat still existed. Nine sites are presumed to still exist (California Natural Diversity Data Base (CNDDB) 1996; Jake Ruygt, California Native Plant Society (CNPS), *in litt.* 1996). The type locality at Mare Island for *Cordylanthus mollis* ssp. *mollis* was destroyed by development and is now a dredge disposal site (CNDDB 1994). A second occurrence, last seen in 1981 near Martinez in Contra Costa and Solano Counties, was dredged, filled, diked, and is now a marina (Stromberg 1986, CNDDB 1994).

The remaining nine occurrences are widely scattered throughout coastal salt or brackish tidal marshes fringing San Pablo and Suisun Bays, in Contra Costa, Napa, and Solano Counties (CNDDB 1994; Brenda Grewell, *in litt.* 1993; Jake Ruygt, *in. litt.* 1996). Three sites, Pt. Pinole, Rush Ranch, and Joice Island Bridge, have very limited habitat and cover less than 0.4 ha (1 acre) each. The population at Fagan Slough covers approximately 1.2 ha (3 acres). The two largest populations are located at Hill Slough and at Concord Naval Weapons Station, each covering approximately 4 ha (10 acres). The entire distribution of *Cordylanthus mollis* ssp. *mollis* currently is restricted to about 12 ha (31 acres) of occupied habitat (Jake Ruygt, 1994 and *in litt.* 1996). The total number of individuals reported among populations varies from 1 at the smallest site to 150,000 plants at the largest site. Of the remaining nine sites, one (McAvoy) has only 23 plants. Most sites have between 1,000 and 6,000 individuals (Jake Ruygt 1994; CNDDB 1996). Individual populations fluctuate in size from year to year, as is typical of annual plants. *Cordylanthus mollis* ssp. *mollis* occurs primarily on private or non-Federal land; the second largest occurrence is found on Department of Defense (U.S. Navy) land. Habitat conversion and fragmentation, water pollution, increases in salinity of tidal marshes due to upstream withdrawals of fresh water, projects that alter the natural tidal regime, indirect effects of urbanization, mosquito abatement activities (including off-road vehicle use), erosion, competition with non-native vegetation, insect predation, and other random events threaten the remaining occurrences of *Cordylanthus mollis* ssp. *mollis*.

The CDWR has conducted surveys for *Cordylanthus mollis* ssp. *mollis* and *Cirsium hydrophilum* var. *hydrophilum*, and these surveys have not been limited to known historic populations. The CDWR has surveyed potential habitat throughout Suisun Marsh, searched portions of the potential habitat along the Contra Costa shoreline, has assisted with searches downstream of Suisun

Bay in the Carquinez Strait and Napa marshes, and has surveyed diked wetlands managed for waterfowl. Despite these surveys, the CDWR has found no new populations since their original data submittal in 1993 (Randall Brown *in. litt.* 1996).

Previous Federal Action

Federal government actions on the two plants began as a result of section 12 of the Act, which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct in the United States. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975, and listed *Cirsium hydrophilum* var. *hydrophilum* and *Cordylanthus mollis* ssp. *mollis* as possibly extinct. The Service published a notice on July 1, 1975 (40 FR 27823), of its acceptance of the report of the Smithsonian Institution as a petition within the context of section 4(c)(2) (petition provisions now are found in section 4(b)(3) of the Act) and its intention thereby to review the status of the plant taxa named therein. The above two taxa were included in the July 1, 1975, notice. On June 16, 1976, the Service published a proposal (41 FR 24523) to determine approximately 1,700 vascular plant species to be endangered species pursuant to section 4 of the Act. The list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and the July 1, 1975, **Federal Register** publication. *Cirsium hydrophilum* var. *hydrophilum* and *Cordylanthus mollis* ssp. *mollis* were included in the June 16, 1976, **Federal Register** proposal.

General comments received on the 1976 proposal were summarized in an April 26, 1978, notice (43 FR 17909). The Act's Amendments of 1978 required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to those proposals already more than 2 years old. In a December 10, 1979, notice (44 FR 70796), the Service withdrew the June 16, 1976, proposal, along with four other proposals that had expired.

The Service published an updated Notice of Review for plants on December 15, 1980 (45 FR 82480). The two plant taxa were listed as category 1 candidates for Federal listing in this document. Category 1 taxa were those that the Service has on file substantial information on biological vulnerability and threats to support preparation of listing proposals. On November 28, 1983, the Service published a supplement to the Notice of Review (48 FR 53640); there were no changes to these taxa in this supplement.

The plant notice was revised again on September 27, 1985 (50 FR 39526), February 21, 1990 (55 FR 6184), and September 30, 1993 (58 FR 51144). In these three notices *Cirsium hydrophilum* var. *hydrophilum* and *Cordylanthus mollis* ssp. *mollis* were included as category 1 candidate species. On February 28, 1996, the Service published a Notice of Review in the **Federal Register** (61 FR 7596) that discontinued the use of candidate categories and considered the former category 1 candidates as simply ''candidates'' for listing purposes.

Section 4(b)(3)(B) of the Act requires the Secretary to make certain findings on petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. This was the case for *Cirsium hydrophilum* var. *hydrophilum* and *Cordylanthus mollis* ssp. *mollis*, because the 1975 Smithsonian report had been accepted as a petition. On October 13, 1982, the Service found that the petitioned listing of these species was warranted, but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act; notification of this finding was published on January 20, 1984 (49 FR 2485). The finding was reviewed annually from October 1983 through 1994, pursuant to section 4(b)(3)(C)(i) of the Act.

A proposal to list *Cirsium hydrophilum* var. *hydrophilum* and *Cordylanthus mollis* ssp. *mollis* as endangered was published on June 12, 1995. The proposal was based on information supplied by reports to the California Diversity Database, and observations and reports by numerous botanists.

The processing of this final listing rule conforms with the Service's final listing priority guidance published on December 5, 1996 (61 FR 64475). The guidance clarifies the order in which the Service will process rulemakings following two related events, the lifting on April 26, 1996, of the moratorium on final listings imposed on April 10, 1995 (Public Law 104–6) and the restoration of significant funding for listing through passage of the omnibus budget reconciliation law on April 26, 1996 following severe funding constraints imposed by a number of continuing resolutions between November 1995 and April 1996. The guidance calls for giving highest priority to handling emergency situations (Tier 1) and second highest priority (Tier 2) to resolving the listing status of outstanding proposed listings. Tier 3 includes the processing of new proposed listings for species facing high magnitude threats, and processing administrative findings on petitions. Tier 4 includes the processing of critical habitat designations. This final rule falls under Tier 2.

This rule has been updated to reflect any changes in distribution, status and threats since the effective date of the listing moratorium, and to incorporate information obtained through the public comment period. This additional information was not of a nature to alter the Service's decision to list the species.

Summary of Comments and Recommendations

In the proposed rule published June 12, 1995 in the **Federal Register** (60 FR 31000), all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. The public comment period closed on August 21, 1995. Appropriate State agencies, county and city governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. A public hearing request was received within 45 days of publication of the proposal from Paul Campos, General Counsel for the Building Industry Association. Because a Congressional moratorium on the Service's activities associated with final listing actions was in effect from April 1995 to April 1996, scheduling of the hearing was delayed. The Service subsequently scheduled and held the public hearing on Wednesday, October 2, 1996, from 6:00 p.m. to 8:00 p.m. at the Holiday Inn, 1350 Holiday Lane, Fairfield, California. To accommodate the hearing, the public comment period was reopened on September 6, 1996, and closed October 15, 1996. Notice of the public hearing and reopening of the public comment period was published in the **Federal Register** September 6, 1996 (61 FR 47105) and in newspapers including *The Napa Register* on September 18, 1996, *The San Francisco Chronicle* on September 18, 1996, *The Contra Costa Times* on September 18, 1996, and *The Fairfield Daily Republic* on September 19, 1996.

During the comment period, the Service received comments (letters and oral testimony) from a total of 14 people. Some people submitted more than one comment to the Service. Six commenters supported the listing, one commenter opposed the listing, and seven commenters are viewed as

neutral. One commenter submitted comments late. Among the six commenters supporting the listing are the California Native Plant Society, the University of California at Davis, and the Napa-Solano Chapter of the Audubon Society. Three commenters provided detailed information on locations, population sizes, and threats to the species. These data have been incorporated into this rule. Two commenters stated that they were researching the threats to the species and hoped that the Service would be available to work with them in the creation of protection and/or mitigation plans as necessary. One commenter representing the Solano County Mosquito Abatement District stated they are willing to work with the Service to avoid actions that may be damaging to endangered plants and habitat. Opposing comments and other comments questioning the proposed rule have been organized into specific issues. These issues and the Service's response to each are summarized as follows:

Issue 1: One commenter stated that the Service should make the precise locations of the two tidal plants available to landowners and the counties in which the species occur. This information would help the landowners ensure that activities they conduct would not harm the two species, if the species exist on their property.

Service Response: In the proposed rule, the Service stated that these plants are restricted to salt or brackish tidal marsh within Solano, Contra Costa, and Napa counties. Individuals owning land in these counties who believe that their actions or activities may result in harm to either of these two species should feel free to provide the Service with detailed maps of their lands prior to conducting these activities so that the Service can provide technical assistance on the exact locations of these species. The Service will make every effort to notify landowners and seek cooperation with surveys or other conservation efforts. The complete file for this rule is available for public inspection, and does contain general information about where the species occurs. The Service is always willing to assist the public in matters aimed at protecting sensitive species.

Issue 2: One commenter was concerned about the listing of *Cordylanthus mollis* ssp. *mollis*, although they did not formally object to the listing. Specifically, the commenter questioned what the legal protection means to the subspecies when it is similar in appearance to *Cordylanthus mollis* ssp. *hispidus* and the two cannot readily be distinguished in the field and there is the possible occurrence of hybridization.

Service Response: The taxonomy of the subspecies has been clarified by Chuang and Heckard (1971), with *Cordylanthus mollis* ssp. *mollis* and *Cordylanthus mollis* ssp. *hispidus* separated primarily by habitat, spike length, and seed size; and secondarily by branching patterns and hirsuteness (i.e., coarse stiff hairs). As with many subspecies, though material may be difficult to identify in the field, *Cordylanthus mollis* ssp. *mollis* and *Cordylanthus mollis* ssp. *hispidus* are recognized as distinct subspecies (Chuang and Heckard 1971, Chuang and Heckard 1993). As the term ''species'' is defined in the Act, the Service can apply the protections of the Act to any species or subspecies of fish, wildlife, or plants, that meets the definition of endangered or threatened. The Act does not attempt to define ''species'' in biological terms, and thus allows the term to be applied according to the best current biological information and understanding of evolution, speciation, and genetics.

Issue 3: One commenter questioned whether mosquito abatement activities had led to a decline in *Cordylanthus mollis* ssp. *mollis.*

Service Response: As documented in Factor ''E'' below, mosquito abatement activities, resulting from increased urbanization, have been observed to adversely impact individual *Cordylanthus mollis* ssp. *mollis* plants.

Issue 4: One commenter stated that there were considerably more populations of *Cordylanthus mollis* ssp. *mollis* in Contra Costa County than reported in the proposed rule, which according to the commenter included only the East Navy marsh and Swanton's or Hasting's Slough Marsh.

Service Response: Populations reported in the proposed rule as occurring in Contra Costa County included Pt. Pinole, McAvoy Boat Harbor, Hasting's Slough, and Concord Naval Weapons Station. As mentioned in the ''Discussion of the Two Species'' section, populations of annual plants tend to fluctuate from year to year. The Service views the additional ''populations'' of *Cordylanthus mollis* ssp. *mollis* located at East Navy South, Swanton's SW, Swanton's NW, and Pt. Pinole to be extensions of existing populations that were included in the proposed rule, and not an expansion of the overall range of this species.

Issue 5: One commenter questioned the adequacy of many aspects of the data used in the proposed rule. This commenter stated that listing at this time is premature and also was concerned that the best available knowledge, including information not yet in print, be used in the rule.

Service Response: In accordance with the ''Interagency Cooperative Policy on Information Standards under the Endangered Species Act'', published in the **Federal Register** on July 1, 1994 (59 FR 34271), the Service impartially reviews all scientific and other information to ensure that any information used to promulgate a regulation to add a species to the list of threatened and endangered species is reliable, credible, and represents the best scientific and commercial data available. The Service used information received from the California Natural Diversity Data Base, knowledgeable botanists, and from studies specifically directed at gathering the information on distribution and threats. Information from botanical collections of these plants that, in some cases, dates from the 1880's, was utilized in the preparation of the proposed rule. The Service received information from Federal, State, and local agencies, and consulted professional botanists during the preparation of the proposed rule. Destruction and loss of habitat and extirpation of populations of these two plants from a variety of causes have been documented. The Service sought comments on the proposed rule from Federal, State, and county entities, species experts, and other individuals. All substantive new data received during the public comment period have been incorporated into the final rule. Specific justification for listing the two plant species is summarized in Factors ''A'' through ''E.''

Issue 6: One commenter stated that we do not know that full tidal action is needed for *Cordylanthus mollis* ssp. *mollis.*

Service Response: All known populations of *Cordylanthus mollis* ssp. *mollis* occur in higher elevational zones within larger tidal marshes that have fully developed tidal channel networks. In sites where this taxa has been extirpated, full tidal action has often been lost. Extensive surveys for *Cordylanthus mollis* ssp. *mollis* have been conducted in tidal and diked marsh lands, and it has not been located in any diked marshes.

Issue 7: One commenter stated that the plants occur in tidal marshes and not in diked areas and, therefore, their lands do not constitute critical habitat for the species.

Service Response: The designation of critical habitat for *Cirsium hydrophilum* var. *hydrophilum* and *Cordylanthus*

mollis ssp. *mollis* is not prudent. Refer to the Critical Habitat section of this final rule for a detailed discussion of the Service's decision.

Peer Review

In accordance with Service peer review policy (July 1, 1994; 59 FR 34270), the Service sent copies of the proposed rule to three independent botanists and tidal marsh specialists who are professors. The Service solicited their review of the proposed rule and pertinent scientific and commercial information substantive to the listing determination. The reviewers did not respond to the Service.

Summary of Factors Affecting the Species

Section 4 of the Act and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists of endangered and threatened species. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Cirsium hydrophilum* (Greene) Jepson var. *hydrophilum* (Suisun thistle) and *Cordylanthus mollis* Gray ssp. *mollis* (soft bird's-beak) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Their Habitat or Range

Habitat for *Cirsium hydrophilum* var. *hydrophilum* and *Cordylanthus mollis* ssp. *mollis* has been severely reduced by past human activities. Hydraulic mining, diking and filling involved in agricultural land conversion and urbanization, waste disposal, port and industrial development, railroad construction, dredging, salt production, and sedimentation have drastically reduced the amount of tidal marsh in California (Atwater 1979, MacDonald 1990, Association of Bay Area Governments (ABAG) 1991). Changes in freshwater inflow, pollution, habitat conversion, habitat fragmentation, and alteration of the natural tidal regime continue to threaten the habitat of both species.

In San Pablo Bay, historical tidal wetlands have been diked and converted to agricultural lands that were farmed for oat hay. In addition, approximately 4,050 ha (10,000 acres) also were converted to salt ponds. In Suisun Bay, most of the 28,780 ha (71,100 acres) of tidal marshes that existed in 1850 were converted originally to agricultural land, and then to diked seasonal wetlands used for waterfowl management. Only 3,780 ha (9,340 acres) within Suisun Marsh remain as tidal marsh (Dedrick 1989). Most of the remaining tidal marshes are backed by steep levees, allowing for little or no transitional wetland habitat—the habitat required by *Cirsium hydrophilum* var. *hydrophilum* and *Cordylanthus mollis* ssp. *mollis*.

The change of freshwater inflow to the marsh has modified the habitat for these two taxa. Agricultural and municipal uses have diverted over 50 percent of the historical annual inflow of freshwater from the Suisun Marsh and Delta (ABAG 1991). During the past 40 years, significant portions of the tidally-influenced brackish marsh within Suisun Bay have become more saline due to decreased freshwater flows (Pavlik 1992). Increased salt levels within the Suisun Marsh may threaten *Cordylanthus mollis* ssp. *mollis* and *Cirsium hydrophilum* var. *hydrophilum*. Salt stress causes decreased plant growth and lower reproduction. When salinity levels remain high during extended drought conditions, population viability of these species may be greatly impaired to the extent they lose their ability to maintain themselves as components of a healthy wetlands ecosystem (Pavlik 1992). When salinity increases in the root zone, salt stress reduces plant abundance and causes shifts in plant distribution. This has occurred even in common salt-tolerant plants (Pavlik 1992). *Cordylanthus mollis* ssp. *mollis* and *Cirsium hydrophilum* var. *hydrophilum* may be especially vulnerable to increased salt levels due to the limited number of individuals and their restricted distribution. Additionally, decreased levels of salt within the Suisun Marsh may threaten *Cordylanthus mollis* ssp. *mollis* by affecting its host plants. *Cordylanthus mollis* ssp. *mollis* is a hemi-root parasite that completes its life cycle by parasitizing the roots of perennial halophytes. *Salicornia virginica* and *Distichlis spicata* are halophyte plant associates and likely hosts of *Cordylanthus mollis* ssp. *mollis*, although specifics of the host relationship have yet to be determined. During the wet and above normal water years of 1995 and 1996, these two plant associates have decreased in abundance in the areas where the *Cordylanthus mollis* ssp. *mollis* is found. Therefore, it is important to maintain the long term natural variability of hydrologic conditions in order to ensure the survival of *Cordylanthus mollis* ssp. *mollis* and the species upon which it may depend (R. Brown, *in. litt.* 1996).

The two plant species also face threats from habitat fragmentation associated with commercial and residential development, road construction, and ongoing effects of historical fragmentation by activities associated with clearing for agriculture, railroad construction, dredging, and conversion to salt ponds. These activities have split habitat into smaller, more isolated units. Habitat fragmentation may alter the physical environment, changing the microclimate, quantity of water, and nutrients required by remnant vegetation (Saunders *et al.* 1991). In addition, a higher proportion of the area of these fragmented natural areas is subject to the influences from external factors (e.g., additional development, off-road vehicular use, numerous other human influences, and competition with non-native vegetation) that disrupt natural ecosystem processes. Further effects of habitat fragmentation on the two plant species are discussed in Factor ''E.''

Projects that convert habitat from tidal marsh to diked seasonal wetlands potentially threaten both *Cirsium hydrophilum* var. *hydrophilum* and *Cordylanthus mollis* ssp. *mollis*. Within Suisun Marsh, the conversion of tidal marsh to diked seasonal wetlands, a practice common in the development of waterfowl managements areas, is a potential threat for both species (Randall Brown, *in litt.* 1993). The CDFG's planned conversion of 40 ha (100 acres) of *Distichlis spicata* (an associated species for both *Cirsium hydrophilum* var. *hydrophilum* and *Cordylanthus mollis* ssp. *mollis*) in Hill Slough as enhancement of habitat for wildlife (CDWR, *in litt.* 1996), will further diminish the amount of suitable habitat for *Cirsium hydrophilum* var. *hydrophilum* and *Cordylanthus mollis* ssp. mollis.

Habitat conversion for planned future urbanization threatens both species. In the Association of Bay Area Governments' analysis of the San Francisco Bay Estuary, over 4,856 ha (12,000 acres) of wetlands in the Bay will be subject to moderate to high development uses over the next 12 years (ABAG 1991). Highway projects within the San Francisco Bay Estuary during the next 20 years alone are expected to fill 146 ha (362 acres) of wetlands (ABAG 1991). Some of the highway projects will threaten *Cordylanthus mollis* ssp. *mollis* by eliminating habitat into which existing populations of this plant could expand. Widening of California Highway 37 will impact wetlands that occur along the Napa River (ABAG 1991) and may adversely affect habitat for *Cordylanthus mollis*

ssp. *mollis*. Proposed widening of Highway 12 near the Suisun Marsh would threaten the habitats of *Cordylanthus mollis* ssp. *mollis* and *Cirsium hydrophilum* var. *hydrophilum* (Brenda Grewell, pers. comm. 1993), either due to habitat fragmentation as discussed above or by runoff.

Projects that alter the natural tidal regime may also threaten both taxa. Although the California Department of Water Resources is no longer pursuing the Western Suisun Marsh Salinity Control Project, projects that may alter the salinity regime and flows, are being evaluated under the CalFed Bay-Delta Program. The goals of the program will be to contribute toward recovery of sensitive species rather than to recover the species. The alternatives of the CalFed program have not been identified yet, but could involve habitat modification associated with restoration activities and the construction of various storage and conveyance structures. These actions could subject tidal marsh to altered flows and changes in salinity that could be detrimental to *Cirsium hydrophilum* var. *hydrophilum* and *Cordylanthus mollis* ssp. *mollis*. The restoration plans have not specifically addressed *Cirsium hydrophilum* var. *hydrophilum* and *Cordylanthus mollis* ssp. *mollis*.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Overutilization currently is not known to be a factor for these two plants. Increased collecting for scientific or horticultural purposes or excessive visits by individuals interested in seeing rare plants could result, however, from increased publicity resulting from publication of this proposal.

C. Disease or Predation

The health of one of the largest occurrences of *Cordylanthus mollis* ssp. *mollis* is declining due to insect predation (Brenda Grewell, pers. comm. 1993). Intense insect seed predation has been observed in the population at Joice Island and Hill Slough within Suisun Marsh in Solano County (Randall Brown, *in litt.* 1993). The presence of a thistle weevil (*Rhinocyllus conicus*) in a portion of the *Cirsium hydrophilum* var. *hydrophilum* population was documented in June 1996 by CDWR. The CDWR has collected thistle weevil in *Cirsium hydrophilum* var. *hydrophilum* flower heads, and observed many flower heads with no seeds. The larval stage of this weevil feeds on the seed. *Phyciods mylitta* caterpillars were collected on a population of *Cirsium hydrophilum* var. *hydrophilum* in September 1996. These caterpillars have caused significant damage to the rosettes of plants that will flower next year (R. Brown, *in. litt.* 1996).

Disease is not known to be a factor for either *Cirsium hydrophilum* var. *hydrophilum* or *Cordylanthus mollis* ssp. *mollis*.

D. The Inadequacy of Existing Regulatory Mechanisms

Section 404 of the Clean Water Act represents the primary Federal law that affords some protection for these two plants since they occur in wetlands. However, the Clean Water Act, by itself does not provide adequate protection for either *Cirsium hydrophilum* var. *hydrophilum* or *Cordylanthus mollis* ssp. *mollis*. The Army Corps of Engineers (Corps) is the Federal agency responsible for administering the section 404 program. Under section 404, nationwide permits may be issued for certain activities that are considered to have minimal impacts, including oil spill cleanup, minor dredging, maintenance dredging of existing basins, some road crossings, and minor bank stabilization (December 13, 1996; 61 FR 65874–65922). However, the Corps seldom withholds authorization of an activity under nationwide permits unless the existence of a listed threatened or endangered species would be jeopardized, regardless of the significance of the affected wetland resources. Activities that do not qualify for authorization under a nationwide permit, including projects that would result in more than minimal adverse environmental effects, either individually or cumulatively, may be authorized by an individual or regional general permit, which are typically subject to more extensive review. Regardless of the type of permit deemed necessary under section 404, rare species such as *Cirsium hydrophilum* var. *hydrophilum* and *Cordylanthus mollis* ssp. *mollis* may receive no special consideration with regard to conservation or protection unless they are listed under the Act.

The Service, as part of the section 404 review process, provides comments to the Corps on nationwide permits and individual permits. The Service's comments are only advisory, although procedures exist for elevating permit review within the agencies when disagreements between the Service and Corps arise concerning the issuance of a permit. In practice, the permitting process for wetland fills and other activity under section 404 are insufficient to protect rare species such as *Cirsium hydrophilum* var. *hydrophilum* and *Cordylanthus mollis* ssp. *mollis*.

CDFG has formally designated *Cordylanthus mollis* ssp. *mollis* as rare under the California Endangered Species Act (chapter 1.5 sec. 2050 *et seq.* of the California Fish and Game Code and Title 14, California Code of Regulations 670.2). This designation by the State of California requires individuals to obtain a permit or an agreement with the CDFG to possess or ''take'' a listed species. Although the ''take'' of State-listed plants is prohibited (California Native Plant Protection Act, chapter 10 sec. 1908 and California Endangered Species Act, chapter 1.5 sec. 2080), State law exempts the taking of such plants via habitat modification or land use changes by the landowner. After CDFG notifies a landowner that a State-listed plant grows on his or her property, the California Native Plant Protection Act requires only that the landowner notify the agency ''at least 10 days in advance of changing the land use to allow salvage of such a plant'' (chapter 10 sec. 1913 of the California Fish and Game Code).

The California Environmental Quality Act (CEQA) requires a full disclosure of the potential environmental impacts of proposed projects. CEQA also obligates disclosure of environmental resources within proposed project areas and may enhance opportunities for conservation efforts. However, CEQA does not guarantee that such conservation efforts will be implemented. The public agency with primary authority or jurisdiction over the project is designated as the lead agency, and is responsible for conducting a review of the project and consulting with the other agencies concerned with the resources affected by the project. Section 15065 of the CEQA Guidelines requires a finding of significance if a project has the potential to ''reduce the number or restrict the range of a rare or endangered plant or animal.'' Once significant effects are identified, the lead agency has the option to require mitigation for effects through changes in the project or to decide that overriding considerations make mitigation infeasible. In the latter case, projects may be approved that cause significant environmental damage, such as resulting in the loss of sites supporting State-listed species. Mitigation plans usually involve the transplantation of the plant species to an existing habitat or an artificially created habitat. Following the development of the transplantation plan, the original site is destroyed. Therefore, if the mitigation effort fails, the resource has already been lost.

Protection of listed species through CEQA is, therefore, dependent upon the discretion of the lead agency involved. In addition, revisions to the CEQA guidelines have been proposed that, if made final, may weaken protections for threatened, endangered, and other sensitive species (U.S. Department of the Interior, *in. litt.* 1997). Final CEQA guidelines are forthcoming.

In 1977, the State of California enacted the Suisun Marsh Preservation Act (Preservation Act) to protect Suisun Marsh. This legislation established primary and secondary management areas. The secondary management areas were established to provide a buffer against development. In 1982, the Preservation Act was amended to exclude, in the primary management area, land proposed for the Lawlor Ranch development. Exclusion of this land has reduced the buffer between urbanization and Suisun Marsh. The indirect effects of urbanization are discussed further in Factors ''A'' and ''E'.

E. Other Natural or Manmade Factors Affecting Their Continued Existence

Both populations of *Cirsium hydrophilum* var. *hydrophilum* are adversely affected by non-native plants. *Lepidium latifolium* (perennial peppergrass), a rated noxious weed (California Department of Food and Agriculture 1993), has ''moved in especially in the last 5 years'' (Brenda Grewell, pers. comm. 1993). *Cirsium hydrophilum* var. *hydrophilum* is out-competed by *L. latifolium*. Hybridization with *Cirsium vulgare* (bull thistle), a non-native, also is a potential threat. *Cirsium vulgare* hybridizes readily with other *Cirsium*. Hybridization with *Cirsium vulgare* was suggested as a possible explanation for the previously presumed extinction of *Cirsium hydrophilum* var. *hydrophilum* (Smith and Berg 1988). *Cordylanthus mollis* ssp. *hispidus* is a species generally associated with more alkaline habitats than tidal marshes where *Cordylanthus mollis* ssp. *mollis* is found. However, hybridization and mixing of traits may be occurring between these two taxa or subspecies as possibly indicated in some voucher species kept in the University of California (Berkeley) and Jepson herbarium reference collections.

Chronic pollution from petroleum products is an ongoing threat to the habitat of both plants within San Pablo Bay and southern Suisun Bay. Oil spills can result in severe and long lasting destruction of salt marsh vegetation. Studies on mangroves, seagrasses, salt marsh grasses, and algae have shown that petroleum causes death, reduced growth, and impaired reproduction in large plants (Albers 1992). The effects of a petroleum spill to plants depends on several factors including the time of year, the type of petroleum product (crude or refined), and the degree of coverage (Hershner and Moore 1977; Rob Ricker, CDFG, pers. comm. 1993). A plant entirely covered by oil will die. Oil that seeps into sediments can affect the roots or rhizomes of plants as well. Oil spills may also affect plants by decreasing the amount of plant biomass (either above or below ground), or by decreasing the reproductive capacity of the plant (Rob Ricker, pers. comm. 1993).

Four hundred to 800 oil spills occur annually within California (Rob Ricker, pers. comm. 1993). Within northern California, 309 reported spills affecting marine or estuarine habitats within the jurisdiction of the Service's Sacramento Fish and Wildlife Office occurred between March 1992 and March 1993 (Office of Environmental Services (OES) 1992 and 1993). Most of these spills occurred in the San Francisco Bay Estuary.

In 1988, an oil spill in Martinez, California, flowed as far as Suisun Bay. Although these plants are found within the northern part of the Suisun Marsh and may not be threatened directly by an oil spill in San Francisco Bay, the potential for oil spills exists from vessels operating within the marsh, as well as from an accidental spill from railroads that bisect the marsh. Oil spills also are an ever present threat to *Cordylanthus mollis* ssp. *mollis* occurring near Point Pinole (Pat O'Brien, General Manager, East Bay Regional Parks District, *in litt.* 1994).

A hazardous waste clean-up effort resulted in the removal of a portion of the Middle Point *Cordylanthus mollis* ssp. *mollis* population in 1994. This population is found on the Concord Naval Weapons Station Property (Ruygt 1994).

Chronic pollution from point and non-point sources, including heavy metals from industrial discharges, also may threaten the habitat of both plants. It is unknown, however, what effects heavy metals in industrial discharges have on these two taxa. In 1978, 52 municipal treatment facilities and 42 industrial facilities continuously discharged wastewater into San Francisco Bay (Western Ecological Services Company (WESCO) 1986). By 1982, over 200 permits for industrial discharges had been granted (WESCO 1986).

The amounts of heavy metals in the San Francisco Bay Estuary are projected to increase during the next 10 years. The San Francisco Bay Conservation and Development Commission, Center for Environmental Design Research, and the Greenbelt Alliance (1992) collectively modeled plausible land use changes and their impact to the health of the San Francisco Bay Estuary. Several methods were used to determine the effects of land use change including two future land use models. The model projecting the highest increase in heavy metal was based on a composite of the general plan maps for all of the counties in the estuary. Amounts of heavy metals including lead, nickel, and cadmium were projected to increase under both future land use models in all the watersheds that include habitat for these two plants.

As discussed in Factor ''A'', habitat fragmentation may alter the physical environment. In addition, habitat fragmentation increases the risks of extinction due to random events. The small, isolated nature of the two populations of *Cirsium hydrophilum* var. *hydrophilum* also makes extinction from random events more likely. Random events such as insect or pest outbreaks, extended drought, oil spills or a combination of several such events, could destroy part of a single population or entire populations. The risk of extirpation due to genetic and demographic problems associated with small populations is a threat to at least the two occurrences of *Cordylanthus mollis* ssp. *mollis* that have fewer than 25 individuals. Additionally, the ongoing harvesting, planting of seed, and attempts at artificially expanding one of the populations in Contra Costa County, that is occurring without proper permits from the State of California, potentially threatens the genetic diversity of *Cordylanthus mollis* ssp. *mollis* (Deborah L. Elliot-Fisk, University of California at Davis, *in. litt.* 1996; David Tibor, CNPS, *in. litt.* 1996).

Mosquito abatement will increase as a result of urbanization (Brenda Grewell, pers. comm. 1993). Mosquito abatement activities threaten *Cirsium hydrophilum* var. *hydrophilum* and *Cordylanthus mollis* ssp. *mollis*. Within Suisun Marsh, both species grow along or near first order channels and mosquito abatement drainage ditches. Ditch cleaning and dredging, and the chemical spraying of vegetation along these channels or ditches may adversely impact individual plants. Plant populations parallel to these channels have been subjected to damage by vehicles used off established roads during mosquito abatement activities (Randall Brown, *in. litt.* 1993).

Foot traffic is a threat to *Cordylanthus mollis* ssp. *mollis*. A trail runs through the occurrence located on East Bay Regional Park's Point Pinole Regional Seashore. Foot traffic also is a potential threat to the largest occurrence of *Cordylanthus mollis* ssp. *mollis* due to the increased urbanization occurring within 0.40 kilometer (0.25 mile). Foot traffic disturbance through *Cordylanthus mollis* ssp. *mollis* can easily damage the shallow and very brittle roots (Stromberg 1986).

Erosion is a threat to *Cordylanthus mollis* ssp. *mollis* located on the Point Pinole Regional Seashore. The main population of *Cordylanthus mollis* ssp. *mollis* is immediately adjacent to a slough that is undergoing bank slumping (Stromberg 1986). Individual plants are threatened by undercutting of the bank and subsequent slumping of the marsh soil into the slough.

Cattle grazing continues on both private and state owned tidal marsh lands adjacent to Hill Slough, and in the privately owned tidal marsh near McAvoy Harbor. Extensive areas of bare ground are now present within the *Cordylanthus mollis* ssp. *mollis* population, decreasing the size of the populations (R. Brown, *in. litt.* 1996).

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these species in determining to finalize this rule. *Cirsium hydrophilum* var. *hydrophilum*, limited to only two populations, is threatened across all of its current range by indirect effects of urbanization, projects that alter the natural tidal regime, vulnerability to extinction due to random events and environmental factors, and competition with non-native vegetation. Urbanization, industrial development, and agricultural land conversion have extirpated or potentially extirpated nearly 45 percent of known occurrences of *Cordylanthus mollis* ssp. *mollis*. *Cordylanthus mollis* ssp. *mollis* is restricted to about 12 ha (31 acres) of habitat. Indirect effects of urbanization including habitat fragmentation and conversion, projects that alter natural tidal regimes, alteration of salinity levels, water pollution, mosquito abatement activities (including off-highway vehicle use), insect predation, erosion, foot traffic, and extirpation due to genetic and demographic problems continue to threaten most occurrences of *Cordylanthus mollis* ssp. *mollis* across its remaining range. Because *Cirsium hydrophilum* var. *hydrophilum* and *Cordylanthus mollis* ssp. *mollis* are in danger of extinction throughout all or a significant part of their respective ranges, they meet the definition of ''endangered'' as it is defined in the Act. The preferred action, therefore, is to list *Cirsium hydrophilum* var. *hydrophilum* and *Cordylanthus mollis* ssp. *mollis* as endangered.

Alternatives to this action were considered but not preferred. Not listing *Cirsium hydrophilum* var. *hydrophilum* and *Cordylanthus mollis* ssp. *mollis* or listing these taxa as threatened would not provide adequate protection and would not be consistent with the Act. The Service is not proposing to designate critical habitat for these plants at this time, as discussed below.

Critical Habitat

Critical habitat is defined in section 3 of the Act as: (i) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with section 4 of the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management consideration or protection and; (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon determination that such areas are essential for the conservation of the species. ''Conservation'' as it is defined in section 3(3) of the Act means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is listed. Service regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist—(1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

The Service finds that designation of critical habitat is not prudent for *Cirsium hydrophilum* var. *hydrophilum* and *Cordylanthus mollis* ssp. *mollis* at this time.

Critical habitat designation for *Cirsium hydrophilum* var. *hydrophilum* is not prudent due to lack of benefit. *Cirsium hydrophilum* var. *hydrophilum* is a wetland species and alteration of its tidal marsh habitat may be regulated by the Corps under the Clean Water Act. The inadequacies of the permitting process for wetland fills and other activities in protecting rare species is discussed under Factor ''D'' of the ''Summary of Factors Affecting the Species'' section above. Although there may be a Federal nexus for *Cirsium hydrophilum* var. *hydrophilum* through the Clean Water Act, the designation of critical habitat for this species would provide little or no benefit to the protection of this species beyond that provided by listing. Because of the small size of the total population of this species (i.e., a few thousand individuals) and the small area of occupied habitat (i.e., less than 0.40 ha (1 ac)), any adverse modification of the occupied habitat would likely jeopardize the continued existence of *Cirsium hydrophilum* var. *hydrophilum*.

Critical habitat designation for *Cordylanthus mollis* ssp. *mollis* is not prudent due to lack of benefit. *Cordylanthus mollis* ssp. *mollis* is a wetland species and alteration of its tidal marsh habitat may be regulated by the Corps under the Clean Water Act. The inadequacies of the permitting process for wetland fills and other activities in protecting rare species is discussed under Factor ''D'' of the ''Summary of Factors Affecting the Species'' section above. Because of the small size of the total population of this species (i.e., several thousand individuals) and the small area of occupied habitat (i.e., about 12 ha (31 ac)), any adverse modification of the occupied habitat would likely jeopardize the continued existence of *Cordylanthus mollis* ssp. *mollis*. Moreover, any benefit that may be gained by designation of critical habitat is out weighed by the detriment of such a designation. The publication of maps depicting precise locations of critical habitat that is required for designation would contribute to the further decline of this species by facilitating trespassing, uncontrolled collecting, and hindering recovery efforts. Urban encroachment in the Suisun Marsh Protection Zone increases the threat of foot traffic in sensitive tidal marsh areas where these plants occur (R. L. Brown, California Department of Water Resources, *in. litt.* 1993), and these areas are easily accessed by foot from the public roads near the marsh. As discussed in Factor ''E'' above, the ongoing harvesting of seeds and attempts at artificially expanding one of the populations in Contra Costa County by seeding, that is occurring without proper permits from the State of California, potentially threatens the genetic diversity of *Cordylanthus mollis* ssp. *mollis* (Deborah L. Elliot-Fisk,

University of California at Davis, *in. litt.* 1996; David Tibor, CNPS, *in. litt.* 1996).

Critical habitat receives consideration under section 7 of the Act with regard to actions carried out, authorized, or funded by a Federal agency. As such, designation of critical habitat may affect non-Federal lands only where such a Federal nexus exists. Critical habitat designation requires Federal agencies to ensure that their actions do not result in destruction or adverse modification of critical habitat. However, both jeopardizing the continued existence of a species and adverse modification of critical habitat have similar standards and thus similar thresholds for violation of section 7 of the Act. In fact, biological opinions that conclude that a Federal agency action is likely to adversely modify critical habitat but not jeopardize the species for which it is designated are extremely rare.

Most populations of the two taxa occur on private or State lands. The designation of critical habitat on private or State lands will afford no additional benefit for these species over that provided as a result of listing provided there is no Federal nexus. Designating critical habitat does not create a management plan for the areas where the listed species occurs; does not establish numerical population goals or prescribe specific management actions (inside or outside of critical habitat); and does not have a direct effect on areas not designated as critical habitat.

Protection of the habitat of these species will be addressed through the section 4 recovery process and the section 7 consultation process. The Service believes that Federal involvement in the areas where these plants occur can be identified without the designation of critical habitat. For the reasons discussed above, the Service finds that the designation of critical habitat for these plants is not prudent.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the State and requires that recovery plans be developed for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(1) requires Federal agencies to use their authorities to further the purposes of the Act by carrying out programs for listed species. If a species is listed, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service.

One occurrence of *Cordylanthus mollis* ssp. *mollis* is on land that is managed by the U.S. Navy. Activities conducted by the U.S. Navy that may affect this species would be subject to review under section 7 of the Act. The U.S. Bureau of Reclamation and the Corps would become involved with these plants through their funding of projects that may directly impact the plants or support development of areas that contain suitable salt or brackish marsh habitat for these plants. The Corps also would be involved as an authorizing agency for permits to dredge or fill wetlands and navigable waters of the United States. The Corps regulates dredging and filling of jurisdictional wetlands and navigable waters, including salt marshes, under section 404 of the Clean Water Act. By regulation, nationwide permits may not be issued where a federally listed endangered or threatened species may be affected by the proposed project without first completing consultation pursuant to section 7 of the Act. The presence of a listed species would highlight the national importance of these resources. Highway construction and maintenance projects that receive funding from the Department of Transportation (Federal Highway Administration) also would be subject to review under section 7 of the Act.

Listing *Cirsium hydrophilum* var. *hydrophilum* and *Cordylanthus mollis* ssp. mollis as endangered provides for development of a recovery plan (or plans) for them. Such plan(s) would bring together both State and Federal efforts for conservation of the plants. The recovery plan(s) would establish a framework for agencies to coordinate activities and cooperate with each other in conservation efforts. The plan(s) would set recovery priorities and estimate costs of various tasks necessary to accomplish them. It also would describe site-specific management actions necessary to achieve conservation and survival of the two species. Additionally, pursuant to section 6 of the Act, the Service would be able to grant funds to affected states for management actions aiding the protection and recovery of these species.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered plants. All prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export; transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale in interstate or foreign commerce, or remove and reduce the species to possession from areas under Federal jurisdiction. In addition, for plants listed as endangered, the Act prohibits the malicious damage or destruction on areas under Federal jurisdiction and the removal, cutting, digging up, or damaging or destroying of such plants in knowing violation of any State law or regulation, including State criminal trespass law. Certain exceptions apply to agents of the Service and State conservation agencies.

The Act and 50 CFR parts 17.62, 17.63, and 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered or threatened plant species under certain circumstances. The Service anticipates few permits would ever be sought or issued for the two species because the plants are not common in cultivation or in the wild. Requests for copies of the regulations on listed plants and inquiries regarding them may be addressed to U.S. Fish and Wildlife Service, Ecological Services, Endangered Species Permits, 911 NE 11th Avenue, Portland, Oregon 97232–4181; telephone 503/231–2063 or FAX 503/231–6243).

The Act directs Federal agencies to protect and promote the recovery of listed species. Collection of listed plants on Federal lands is prohibited. Proposed Federal projects and actions including activities on private or non-Federal lands that involve Federal funding or permitting require review to ensure they will not jeopardize the survival of any listed species, including plants. The Act does not prohibit ''take'' of listed plants on private lands, but private landowners

should be aware of State laws protecting imperiled plants.

It is the policy of the Service, published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of the listing on proposed and ongoing activities within a species' range. Most occurrences of both plants are either on private or non-Federal lands. One population of *Cordylanthus mollis* ssp. *mollis* occurs on land managed by the Department of Defense (U.S. Navy). The Service believes that the following actions would result in a violation of section 9, although possible violations are not limited to these actions alone—collection, damage, or destruction of these species on Federal lands, except in certain cases described below; and activities on non-Federal lands conducted in knowing violation of California State law, which requires a ten day notice be given before taking of plants on private land. The Service believes that, based on the best available information at this time, the following actions will not result in a violation of section 9 on private land provided that they do not violate State trespass or other laws—waterfowl hunting, bird watching, and fishing. Activities that occur on Federal land, or on private land that receive Federal authorization, permits, or funding, and for which either a Federal endangered species permit is issued to allow collection for scientific or recovery purposes, or a consultation is conducted in accordance with section 7 of the Act, would also not result in a violation of section 9. The Service is not aware of any otherwise lawful activities being conducted or proposed by the public that will be affected by this listing and result in a violation of section 9. General prohibitions and exceptions that apply to all endangered plants in section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply as discussed earlier in this section. Questions regarding whether specific activities will constitute a violation of section 9 should be directed to the Field Supervisor of the Service's Sacramento Fish and Wildlife Office (see **ADDRESSES** section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment or Environmental Impact Statement, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Required Determinations

The Service has examined this regulation under the Paperwork Reduction Act of 1995 and found it to contain no information collection requirements.

References Cited

A complete list of all references cited herein is available, upon request, from the Field Supervisor, Sacramento Fish and Wildlife Office (see **ADDRESSES** section).

Author: The primary authors of this final rule are Kirsten Tarp and Matthew D. Vandenberg, U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulations Promulgation

Accordingly, Part 17, subchapter B of chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for Part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Section 17.12(h) is amended by adding the following, in alphabetical order under FLOWERING PLANTS, to the List of Endangered and Threatened Plants, to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family name	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
*	*	*	*	*	*	*	
Cirsium hydrophilum var. *hydrophilum.*	Suisun thistle	U.S.A. (CA)	Asteraceae	E	.....	NA	NA
*	*	*	*	*	*	*	
Cordylanthus mollis ssp. *mollis.*	Soft bird's-beak	U.S.A. (CA)	Scrophulariaceae	E	.....	NA	NA
*	*	*	*	*	*	*	

Dated: November 12, 1997.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 97–30552 Filed 11–19–97; 8:45 am]

BILLING CODE 4310–55–P

Proposed Rules

Federal Register
Vol. 62, No. 224
Thursday, November 20, 1997

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. 143CE, Notice No. SC–23–ACE–93]

Special Conditions; EXTRA Flugzeugbau GmbH EA–400 Airplane Design

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Special Conditions.

SUMMARY: This document proposes special conditions for the EXTRA Flugzeugbau GmbH EA–400 airplane design. These designs will have novel and unusual design features when compared to the state of technology anticipated in the applicable airworthiness standards. These design features include performance characteristics for which the applicable regulations do not contain adequate or appropriate airworthiness standards. This document contains the additional airworthiness standards that the Administrator considers necessary to establish a level of safety equivalent to that provided by the current airworthiness standards.

DATES: Comments must be received on or before December 22, 1997.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Regional Counsel, ACE–7, Attention: Rules Docket Clerk, Docket No. 143CE, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. All comments must be marked: Docket No. 143CE. Comments may be inspected weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m., at the Rules Docket location.

FOR FURTHER INFORMATION CONTACT: Kenneth W. Payauys, Aerospace Engineer, Standards Office (ACE–110), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone (816) 426–5688.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of these special conditions by submitting written data, views, or arguments. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address given above. All communications received on or before the closing date for comments given above will be considered by the Administrator before taking further rulemaking action on this proposal. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 143CE.'' The postcard will be date stamped and returned to the addressee. The proposals contained in this notice may be changed in light of the comments received. All comments received will be available for examination by interested parties, both before and after the closing date for comments, at the Rules Docket. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Background

On April 6, 1993, the EXTRA Flugzeugbau GmbH, Schwarze Heide 21, D–46569 Hünxe, Germany, made application for normal category type certification of the Model EA–400 airplane design. The EA–400 design is a two-place (side-by-side), all composite material, cantilevered high-wing, retractable gear, unpressurized, single reciprocating engine, airplane with a maximum design weight of 3,974 pounds (1800 kilograms). It is intended for 14 CFR Part 91 operation as a day-VFR normal category airplane.

Type Certification Basis

The type certification basis of the EXTRA Flugzeugbau GmbH EA–400 airplane design is the following: 14 CFR Part 23, effective February 1, 1965, through amendment 23–45, effective August 6, 1993; 14 CFR Part 36, effective December 1, 1969, through amendment 36–21 effective December 28, 1995; exemptions, if any; equivalent level of safety findings, if any; and the special conditions adopted by this rulemaking action.

Discussion

Special conditions may be issued and amended, as necessary, as part of the type certification basis if the Administrator finds that the airworthiness standards designated under 14 CFR Part 21, § 21.17(a)(1) do not contain adequate or appropriate safety standards because of novel or unusual design features of an airplane. Special conditions, as appropriate, are issued under 14 CFR Part 11, § 11.49 after public notice, as required by §§ 11.28 and 11.29, and become a part of the type certification basis, as provided by 14 CFR Part 21, § 21.17(a)(2).

The proposed type design of the EXTRA Flugzeugbau GmbH EA–400 airplane incorporates certain novel and unusual design features for which the airworthiness regulations do not contain adequate or appropriate safety standards. These features include certain performance characteristics necessary for this type of airplane design that were not foreseen by the existing regulations.

This special condition addresses the flight safety of the EA–400 in case of an engine compartment fire with resulting heat conduction through the engine-mounts to composite structure joints beyond the firewall. The type certificate applicant shall demonstrate that the airplane structure design, especially the engine-mount attachments to the structure beyond the firewall, is able to retain the engine while withstanding the following:

1. An engine compartment fire, the loss of the most highly loaded composite joint, and heating of the next most highly loaded composite joint from those that remain;
2. Maximum continuous power for 5 minutes; and
3. Combined airplane flight maneuver and gust limit loads for at least 15 minutes.

Note: The engine-mount attachments at the firewall are not the same as the engine-to-engine-mount attachments, which contain vibration dampers.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

Citation

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g); 40113, 44701, 44702, and 44704; 14 CFR 21.16 and 21.17; and 14 CFR 11.28 and 11.29(b).

The Proposed Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes the following special conditions as part of the type certification basis for the EXTRA Flugzeugbau GmbH EA–400 airplane design.

Heat Capability of Engine Mount and Fuselage Connection Joint

(a) Modify the airworthiness standards given in 14 CFR part 23, POWERPLANT FIRE PROTECTION, *Nacelle areas behind firewalls* (§ 23.1182), by making the most critical composite engine-mount attachment ineffective (assumed destroyed by heat). Then, for 15 minutes, apply an additional flame test of 500°C (932°F) to the next most structurally critical engine-mount of those remaining. The flame shall encompass the whole engine-mount structural attach fitting. Conductive heat will affect the metallic and composite joint structural capability beyond the firewall. Test the joint structural capability with these simultaneous limit load conditions (under these conditions, the engine shall remain attached to the airplane):

(1) The combined thrust, torque and gyroscopic loads resulting from the engine and propeller at maximum continuous power for the first 5 minutes, and

(2) The airplane normal inertial limit loads that result from the following:

(i) A maneuver load factor equal to that obtained from a constant altitude 30° bank, combined with

(ii) The positive and negative vertical design gust load factors that occur at the design maneuvering speed and the minimum flying weight, and

(iii) A factor-of-safety equal to one.

Issued in Kansas City, Missouri on November 6, 1997.

Mary Ellen A. Schutt,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–30496 Filed 11–19–97; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AWP–10]

Proposed Amendment of Class E Airspace; Tracy, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Class E airspace area at Tracy, CA. The establishment of a Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 11, a GPS SIAP to RWY 25, and a GPS SIAP to RWY 29 at Tracy Municipal Airport has made this proposal necessary. Additional controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing the approach and departure procedures at Tracy Municipal Airport. The intended effect of this proposal is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Tracy Municipal Airport, Tracy, CA.

DATES: Comments must be received on or before December 29, 1997.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, Airspace Branch, AWP–520, Docket No. 97–AWP–10, Air Traffic Division, 15000 Aviation Boulevard, Lawndale, California, 90261.

The official docket may be examined in the Office of the Assistant Chief Counsel, Western Pacific Region, Federal Aviation Administration, Room 6007, 15000 Aviation Boulevard, Lawndale, California, 90261.

An informal docket may also be examined during normal business hours at the Office of the Manager, Airspace Branch, Air Traffic Division at the above address.

FOR FURTHER INFORMATION CONTACT: Larry Tonish, Airspace Specialist, Airspace Branch, AWP–520, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California, 90261, telephone (310) 725–6531.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on the notice must submit with the comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 97–AWP–10.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Airspace Branch, Air Traffic Division, 15000 Aviation Boulevard, Lawndale, California 90261, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Airspace Branch, 15000 Aviation Boulevard, Lawndale, California 90261. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedures.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to amend the Class E airspace area at Tracy, CA. The establishment of a GPS RWY 11 SIAP, GPS RWY 25 SIAP, and GPS RWY 29 SIAP at Tracy Municipal Airport has made this proposal necessary. Additional controlled airspace extending upward from 700 feet above the surface is needed to contain aircraft executing the approach and departures procedures at Tracy Municipal Airport. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing the GPS RWY 11

SIAP, GPS RWY 25 SIAP, and GPS RWY 29 SIAP and other IFR operations at Tracy Municipal Airport, Tracy, CA. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.E dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in this Order.

The FAA has determined that this proposed regulation only invovles an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E. O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AWP CA E5 Tracy, CA [Revised]

Tracy Municipal Airport, CA
(Lat. 37°41′15″ N, long. 121°26′29″ W)
Manteca VORTAC
(Lat. 37°50′01″ N, long. 121°10′17″ W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Tracy Municipal Airport and within 2.2 miles each side of the Manteca VORTAC 237° radial, extending from the 6.4-mile radius to 4.9 miles southwest of the Manteca VORTAC and within 1.8 miles each side of the 117° bearing from the Tracy Municipal Airport, extending from the 6.4-mile radius to 8.4 miles southeast of the Tracy Municipal Airport and within 1.8 miles each side of the 326° bearing from the Tracy Municipal Airport, extending from the 6.4-miles radius to 7.7 miles northwest of the Tracy Municipal Airport, excluding that portion within the Stockton, CA, Class E and Livermore, CA, Class E airspace areas, and excluding that airspace within Restricted Area R2531A.

* * * * *

Issued in Los Angeles, California, on November 7, 1997.

Michael Lammes,

Acting Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 97–30353 Filed 11–19–97; 8:45 am]

BILLING CODE 4910–13–M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1700

Requirements for Child-Resistant Packaging; Household Products With More Than 50 mg of Elemental Fluoride and More Than 0.5 Percent Elemental Fluoride; and Modification of Exemption for Oral Prescription Drugs With Sodium Fluoride

AGENCY: Consumer Product Safety Commission.

ACTION: Proposed rule.

SUMMARY: The Commission is proposing a rule to require child-resistant (''CR'') packaging for household products containing more than the equivalent of 50 mg of elemental fluoride *and* more than the equivalent of 0.5 percent elemental fluoride (on a weight-to-volume (''w/v'') or weight-to-weight (''w/w'') basis). Examples of such products are some rust removers, toilet cleaners, metal cleaners and etching products. Dental products, such as toothpaste, contain lower levels of fluoride and would not be affected. For consistency, the Commission is also proposing to modify the oral prescription drug exemption for sodium fluoride preparations. Instead of allowing drugs with no more than 264 mg of sodium fluoride per package to be in non-CR packaging as the current rule does, the Commission proposes to allow such drugs with only 50 mg or less of the equivalent of elemental fluoride (110 mg or less of sodium fluoride) per package and no more than the equivalent of 0.5 percent elemental fluoride on a w/v or w/w basis. The Commission has preliminarily determined that child-resistant packaging is necessary to protect children under 5 years of age from serious personal injury and serious illness resulting from handling or ingesting a toxic amount of elemental fluoride. The Commission takes this action under the authority of the Poison Prevention Packaging Act of 1970.

DATES: Comments on the proposal should be submitted no later than February 3, 1998.

ADDRESSES: Comments should be mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207, or delivered to the Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East-West Highway, Bethesda, Maryland 20814–4408, telephone (301)504–0800. Comments may also be filed by telefacsimile to (301) 504–0127 or by email to cpsc-os@cpsc.gov.

FOR FURTHER INFORMATION CONTACT: Jacqueline Ferrante, Ph.D., Division of Health Sciences, Directorate for Epidemiology and Health Sciences, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301)504–0477 ext. 1199.

SUPPLEMENTARY INFORMATION:

A. Background

1. Household Products Containing Fluoride

Many types of household products may contain fluoride in one form or another. Fluorides are ingredients in cleaning products for metal, tile, brick, cement, wheels, radiators, siding, toilets, ovens and drains. Fluorides are also found in rust and water stain removers, silver solder and other welding fluxes, etching compounds, laundry sour, air conditioner coil cleaners and floor polishes. The fluorides that may be ingredients in these products and are potentially toxic are hydrofluoric acid (''HF''), ammonium bifluoride, ammonium fluoride, potassium bifluoride, sodium bifluoride, sodium fluoride and sodium fluosilicate.[1] [3][2]

Many dental products also contain fluorides, but at lower levels.

[1] The percentage of elemental fluoride in any compound is determined by dividing the molecular weight of fluoride (~ 19 grams/mole) by the molecular weight of the compound (e.g., the molecular weight of sodium fluoride = 42 grams/mole). Sodium fluoride contains 45% elemental fluoride (19/42 × 100 = 45%).

[2] Numbers in brackets refer to documents listed at the end of this notice.

Prescription dental products are available with fluoride contents of 0.125–0.5 mg/ml for drops, 0.5–1 mg per tablet, 1 mg per lozenge, 0.1–0.9 mg/g for topical rinses (0.01–0.09 percent and 5 mg/g (0.5 percent) for topical gels. Prescription vitamin preparations are also available containing 0.25 to 1 mg elemental fluoride per ml. The highest concentration of elemental fluoride in any such dental product available over-the-counter (''OTC'') is 0.15 percent for pastes and powders and 0.5 percent for liquids or gels. In contrast, some household products, particularly metal cleaners and rust removers containing hydrofluoric acid and/or soluble fluoride salts, can have as much as 57 percent elemental fluoride. In general, the concentrations of elemental fluoride in household cleaners and surface preparation agents are 10 to 1,000-fold higher than concentrations found in dental products.[2]

2. Relevant Statutory and Regulatory Provisions

The Poison Prevention Packaging Act of 1970 (''PPPA''), 15 U.S.C. 1471–1476, authorizes the Commission to establish standards for the ''special packaging'' of any household substance if (1) the degree or nature of the hazard to children in the availability of such substance, by reason of its packaging, is such that special packaging is required to protect children from serious personal injury or serious illness resulting from handling, using, or ingesting such substance and (2) the special packaging is technically feasible, practicable, and appropriate for such substance.

Special packaging, also referred to as ''child-resistant (CR) packaging,'' is (1) designed or constructed to be significantly difficult for children under 5 years of age to open or obtain a toxic or harmful amount of the substance contained therein within a reasonable time and (2) not difficult for ''normal adults'' to use properly. 15 U.S.C. 1471(4). Household substances for which the Commission may require CR packaging include (among other categories) foods, drugs, or cosmetics as these terms are defined in the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321). 15 U.S.C. 1471(2)(B). The Commission has performance requirements for special packaging. 16 CFR 1700.15, 1700.20.

Section 4(a) of the PPPA, 15 U.S.C. 1473(a), allows the manufacturer or packer to package a nonprescription product subject to special packaging standards in one size of non-CR packaging only if the manufacturer (or packer) also supplies the substance in CR packages of a popular size, and the non-CR packages bear conspicuous labeling stating: ''This package for households without young children.'' 15 U.S.C. 1473(a), 16 CFR 1700.5.

3. Existing Requirements for Fluoride-Containing Products

The Commission currently requires CR packaging for oral prescription drugs with fluoride, but it exempts those in liquid or tablet form that contain no more than 264 mg of sodium fluoride (equivalent to 120 mg fluoride) per package. 16 CFR 1700.14(10)(vii). In 1977, the Commission first exempted aqueous solutions of sodium fluoride at that level. In 1980, in response to a petition, the Commission extended the exemption to include liquid and tablet forms. When it issued the exemption, the Commission believed that drugs with sodium fluoride below that level would not cause serious personal injury or illness to children under 5 years of age. The Commission based this decision on the lack of serious adverse human experience associated with such drugs at that time. The level was also partly based on a recommendation by the American Dental Association that no more than 264 mg of sodium fluoride should be dispensed at one time. 45 FR 78630. Also at that time, the Food and Drug Administration (''FDA'') had determined that an acutely toxic dose of sodium fluoride for a 25 pound (~ 11.4 kg) child was in the range of 50 to 250 mg/kg (equivalent to ~ 23 to 113 mg/kg of elemental fluoride) (42 FR 62363). As discussed below, the Commission is proposing a new level that is based on current information concerning the toxicity of fluoride and would be consistent with the proposed CR requirement for fluoride-containing household products.

The FDA limits OTC packages of toothpaste and tooth powder to no more than 276 mg total elemental fluoride per package. 21 CFR 310.545. However, preventative treatment rinses and gels sold OTC must contain no more than 120 mg total elemental fluoride per package. 21 CFR 355.10.

B. Toxicity of Fluoride

Most available toxicity information on fluoride relates to acute toxicity of hydrofluoric acid (''HF''). However, other water soluble fluoride-containing compounds can cause fluoride poisoning. The fluoride ion is systemically absorbed almost immediately. It is highly penetrating and reactive and can cause both systemic poisoning and tissue destruction. Fluoride ions, once separated from either HF or fluoride salts, penetrate deep into tissues, causing burning at sites deeper than the original exposure site. The process of tissue destruction can continue for days.[2]

Systemic fluoride poisoning after ingestion or inhalation occurs very rapidly as the fluoride is absorbed into the gastrointestinal (''GI'') tract and lungs. Systemic fluoride poisoning can also result from dermal exposure if the exposure is massive or the skin barrier has been destroyed, as with severe burns. Fluoride absorption can produce hyperkalemia (elevated serum potassium), hypocalcemia (lowered serum calcium), hypomagnesemia (lowered serum magnesium), and metabolic and respiratory acidosis. These disturbances can then bring on cardiac arrhythmia, respiratory stimulation followed by respiratory depression, muscle spasms, convulsions, central nervous system (''CNS'') depression, possible respiratory paralysis or cardiac failure, and death. Fluoride may also inhibit cellular respiration and glycolysis, alter membrane permeability and excitability, and cause neurotoxic and adverse GI effects.[2]

When exposure is through inhalation, fluorides can cause severe chemical burns to the respiratory system. Inhalation can result in difficulty breathing (dyspnea), bronchospasms, chemical pneumonitis, pulmonary edema, airway obstruction, and tracheobronchitis. The severity of burns from dermal absorption can vary depending on the concentration of fluoride available, duration of the exposure, the surface area exposed, and the penetrability of the exposed tissue. Dermal exposure to 6 to 10 percent HF is the lowest concentration range known to cause skin injury in humans. Destruction of tissue under the skin may occur, as may decalcification and erosion of bone. Death from systemic fluoride toxicity has resulted from dermal exposure to 70 percent HF over 2.5 percent of the body surface.[2]

Ocular exposure can result in serious eye injury. Exposure to concentrations of 0.5 percent can lead to mild conjunctivitis and greater concentrations can lead to progressively severe results such as immediate corneal necrosis (20 percent solution).

Ingestion of fluoride can result in mild to severe GI symptoms. Reports suggest that ingesting 3 to 5 milligrams per kilogram of fluoride causes vomiting, diarrhea, and abdominal pain. Ingestion of more than 5 mg/kg may produce systemic toxicity. A retrospective poison control center study of fluoride ingestions reported

that symptoms, primarily safely tolerated GI symptoms that tended to resolve within 24 hours, developed following ingestions of 4 to 8.4 mg/kg of fluoride.[2]

According to the medical literature, a safely tolerated dose (''STD'') and a certainly lethal dose (''CLD'') were determined from 600 fluoride poisoning deaths. The CLD was determined to be 32 to 64 mg/kg and the STD was estimated at one fourth that, or 8 to 16 mg/kg. These values were statistically determined and do not correspond to the actual lowest toxic or lethal levels of fluoride. The lowest documented lethal dose for fluoride is 16 mg/kg in a 3-year-old child. There were complicating factors in this death. The child may have taken other medications and he suffered from Crohn's disease (an inflammatory disorder of the GI tract) that may have contributed to his death.[2]

C. Injury Data

Medical Literature

There are many reports in the medical literature of deaths and injuries involving fluoride-containing products. A retrospective study conducted by the American Association of Poison Control Centers (''AAPCC'') of hydrofluoric acid burns from rust stain removers applied to clothing found 619 such cases in 1990. Five of these required hospitalization. Some of the burns occurred even after the clothing had been washed.[2]

Other reports included that of a 14-month-old child who developed hypocalcemia and hyperfluoridemia (elevated blood fluoride level) and went into cardiac arrest after exposure to a rust remover containing HF. A 2½-year-old child developed respiratory failure and repeated episodes of ventricular tachycardia (rapid heart beat) and fibrillation after ingesting a laundry sour (used in laundry operations to neutralize alkalis or decompose hypochlorite bleach) with sodium fluosilicate. A 28-year-old man died after accidentally drinking floor polish that contained fluosilicate. A 56-year-old man died after ingesting a spoonful of glass etching cream (20% ammonium bifluoride and 13% sodium bifluoride). He had severe burns in his esophagus and stomach, and he suffered cardiac arrest 5 hours after the ingestion.[2]

CPSC Databases

CPSC has several databases for poison incidents. The staff reviewed cases from 1988 to May 1997 in the National Electronic Injury Surveillance System (''NEISS''), the Injury or Potential Injury Incident (''IIPI'') files, Death Certificate (''DCRT'') database, and In-Depth-Investigation (''INDP'') files. From 1988 to 1996, NEISS had reports of 31 incidents involving products documented to contain fluoride. Two of these were accidental ingestions by children under 5 years old. Most other injuries involved chemical burns of the hands.[2]

The INDP files contain numerous injury reports. For example, a 50-year-old woman was using a water stain remover with 6 percent HF when it leaked through her rubber gloves and to her skin. She developed intense pain 4 hours later when the fluoride ion penetrated through to the bones of her forearm. Four months after the incident she had only partial use of her arm and hand. In another case, an 18-year-old man developed second and third degree burns on his hands after exposure to an automobile water spot remover with HF. His fingers became permanently flexed from damage to the muscle and connective tissue. A 20-year-old male died of cardiac arrest after ingesting one to two ounces of a wheel cleaner with fluoride.[2]

Three reports in the INDP files involve children under 5 years old who died after ingesting fluoride-containing products. A three-year-old child ingested an unknown product with HF. The second case involved a 2-year-old child who ingested a toilet bowl stain remover that contained 15.9 percent ammonium bifluoride. The most recent case was an 18-month-old child who ingested an unknown amount of air conditioner coil cleaner with 8 percent HF and 8 percent phosphoric acid.[2]

Since 1995, there have been six additional reports of fluoride poisoning in children under 5 years of age from the wheel cleaning product involved in the death of the 20-year-old man described above. The product contains ammonium bifluoride and ammonium fluoride salts, reportedly containing at least 15 percent fluoride. Before December, 1996, it was marketed for household use in non-CR packaging. Since that date it has been packaged in CR packaging, and in September 1997 it was recalled by the manufacturer.[2]

AAPCC Data

The staff reviewed AAPCC ingestion data involving children under 5 years old and products known to, or that may, contain fluoride. (The actual number of fluoride exposures cannot be determined because some products that contain fluoride are not identified as such and therefore may be coded to generic categories such as acidic cleaning products or other unknown cleaning products.) From 1993 to 1995, there were no reported fatalities in this age group. Out of a total of 499 exposures to products known to contain HF, there were 2 major[3] outcomes and 24 moderate[4] outcomes. The AAPCC data also show 23 major outcomes and 188 moderate outcomes for other acid household products. Some of these may have contained fluoride. The frequency of injury for dental treatments was much lower than that for household products containing HF. Of approximately 23,000 exposures to such dental products, there were 34 moderate outcomes, and the only documented major outcome was a miscoded incident where the child experienced an allergic reaction to the product rather than systemic toxicity from an overdose.[2]

The staff also compiled data from AAPCC annual reports for all ages and all routes of exposure for the years 1985 to 1995. During this time period, there were about 25,000 exposures to products containing HF. Of these, 2,881 resulted in moderate outcomes and 275 in major outcomes. There were also injuries from dental products, fluoride mineral/electrolyte products, and vitamins with fluoride. A total of 18 deaths were reported in the HF category. Two deaths involved children under 5 years old. One ingested an ammonium bifluoride toilet stain remover (described above) and the other child died after ingesting a toilet cleaner with HF. Generally, these AAPCC data suggest that household products with HF pose a more serious risk of injury than other classes of fluoride products. Moderate to serious outcomes developed in 12.8 percent of the exposures to HF compared to only 0.4 percent of the exposures to anticaries products.[2]

D. Level of Regulation for Household Products Containing Fluoride

The Commission is proposing a rule that requires special packaging for household products containing more than the equivalent of 50 mg of elemental fluoride and more than the equivalent of 0.5 percent elemental fluoride on a weight-to-volume (''w/v'') basis for liquids or a weight-to-weight (''w/w'') basis for non-liquids.[1&2] The Commission is especially interested in obtaining information and receiving

[3] Major outcome—The patient exhibited signs or symptoms which were life-threatening or resulted in significant residual disability or disfigurement.

[4] Moderate outcome—The patient exhibited signs and symptoms that were more pronounced, more prolonged, or more of a systemic nature. Usually some form of treatment was required. Symptoms were not life-threatening and the patient had no residual disability or disfigurement.

comments on the uses and marketing patterns of glass etching creams.

There is no well defined lethal dose for fluoride. In the medical literature, one source cites a minimum lethal dose in humans of 71 mg/kg and another specifies a lethal oral dose in the range of 70 to 140 mg/kg. The staff considers these values too high based on documented cases of fluoride toxicity. There is one documented death from ingestion of 16 mg/kg fluoride, but as discussed above, other medical factors may have contributed to that death. Most evidence suggests that the lower limit of the calculated certainly lethal dose (CLD) of 32 mg/kg is a reasonable estimate for a minimum lethal dose.[2]

Similarly, there is no established toxic dose for fluoride. Generally, greater than 6 percent HF can cause dermal burns and more than 0.5 percent can lead to serious eye injury. Several reports suggest ingestion of 3 to 5 mg/kg produces symptoms and that more than 5 mg/kg (50 mg in a 10 kg child) can produce systemic toxicity. Additionally, some medical professionals advise medical observation following ingestions of more than 5 to 8 mg/kg. Based on this information, the Commission proposes a level for regulation that would include all household products with more than 50 mg of elemental fluoride *and* more than 0.5 percent elemental fluoride on a w/v basis for liquids or a w/w basis for non-liquids. There is no evidence that 50 mg or less of elemental fluoride or concentrations less than 0.5 percent cause serious systemic toxicity or serious burns. [1&2]

E. Level of Regulation for Oral Prescription Drugs Containing Sodium Fluoride

Based on the toxicity information discussed above, the Commission believes that the current exemption for oral prescription drugs with no more than 264 mg of sodium fluoride should be modified. To be consistent with the proposed level for household products containing fluoride, the Commission is proposing that the level for the oral prescription drug exemption be changed to allow no more than the equivalent of 50 mg of elemental fluoride (110 mg sodium fluoride) per package and no more than a concentration of 0.5 percent elemental fluoride on a w/v basis for liquids or a w/w basis for non-liquids. The proposed level provides a safety factor to protect sensitive individuals.[1&2]

The Commission does not believe that changing the level of exemption for prescription drugs containing sodium fluoride will impact any of the currently exempted dental products with more than 50 mg of fluoride because these products have 0.5 percent or less fluoride. There is no evidence that any of these products have caused serious injury. The Commission proposes modifying the exemption level so that it is consistent with the regulated level proposed for household products containing fluoride.[1]

F. Statutory Considerations

1. Hazard to Children

As noted above, the toxicity data concerning children's ingestion of fluoride demonstrate that fluoride can cause serious illness and injury to children. Moreover, it is available to children in common household products. Although some products currently use CR packaging, others do not. The Commission preliminarily concludes that a regulation is needed to ensure that products subject to the regulation will be placed in CR packaging by any current as well as new manufacturers.[1&2]

The same hazard posed to children by toxic amounts of fluoride in household products also exists from such levels of fluoride in oral prescription drugs. Therefore, the Commission is proposing to modify the existing exemption for such drugs with sodium fluoride to reflect current toxicity data and be consistent with the proposed level for fluoride-containing household products.[1&2]

Pursuant to section 3(a) of the PPPA, 15 U.S.C. 1472(a), the Commission preliminarily finds that the degree and nature of the hazard to children from handling or ingesting fluoride is such that special packaging is required to protect children from serious illness. The Commission bases this finding on the toxic nature of these products, described above, and their accessibility to children in the home.

2. Technical Feasibility, Practicability, and Appropriateness

In issuing a standard for special packaging under the PPPA, the Commission is required to find that the special packaging is ''technically feasible, practicable, and appropriate.'' 15 U.S.C. 1472(a)(2). Technical feasibility may be found when technology exists or can be readily developed and implemented by the effective date to produce packaging that conforms to the standards. Practicability means that special packaging complying with the standards can utilize modern mass production and assembly line techniques. Packaging is appropriate when complying packaging will adequately protect the integrity of the substance and not interfere with its intended storage or use.[4]

Some OTC fluoride-containing household products are packaged in containers with non-CR continuous threaded closures. The Commission also is aware of such products packaged in aerosols and mechanical pumps. Various types and designs of senior friendly CR packaging can be readily obtained that would be suitable for fluoride-containing products.[3&4]

Two manufacturers currently use senior-friendly continuous threaded CR packaging for their fluoride-containing household products. Another manufacturer uses a senior-friendly trigger mechanical pump mechanism for its product. This shows that these types of CR packages are technically feasible, practicable and appropriate for fluoride-containing products. The Commission knows of at least one fluoride product that uses a non-CR aerosol package. The manufacturer of another regulated product is currently using a senior-friendly CR aerosol overcap. Thus, this kind of CR packaging could be used for fluoride-containing products. Finally, various designs of senior-friendly snap type reclosable CR packaging that would be appropriate for non-liquid fluoride-containing products are available. Thus, appropriate senior-friendly CR packaging is available for products marketed in continuous threaded, snap, aerosols, and trigger spray packaging.[4] Therefore, the Commission concludes that CR packaging for fluoride-containing products is technically feasible, practicable, and appropriate.

3. Other Considerations

In establishing a special packaging standard under the PPPA, the Commission must consider the following:

a. The reasonableness of the standard;

b. Available scientific, medical, and engineering data concerning special packaging and concerning childhood accidental ingestions, illness, and injury caused by household substances;

c. The manufacturing practices of industries affected by the PPPA; and

d. The nature and use of the household substance. 15 U.S.C. 1472(b).

The Commission has considered these factors with respect to the various determinations made in this notice, and preliminarily finds no reason to conclude that the rule is unreasonable or otherwise inappropriate.

G. Effective Date

The PPPA provides that no regulation shall take effect sooner than 180 days or later than one year from the date such

final regulation is issued, except that, for good cause, the Commission may establish an earlier effective date if it determines an earlier date to be in the public interest. 15 U.S.C. 1471n.

Senior-friendly special packaging is currently commercially available for most types of CR packaging. Aerosol and mechanical pump packages should be commercially available in senior-friendly CR designs within nine months of a final rule.[1,4 & 5] Thus, the Commission proposes that a final rule would take effect nine months after publication of the final rule.

Currently available information indicates that full commercial availability for senior-friendly mechanical pump packages and aerosol overcap packages could take from 9 to 12 months from the date a final rule is issued. If comments on this proposal indicate that manufacturers using mechanical pump packages and aerosol overcap packages need more than 9 months to comply with the rule, the Commission may (1) specify a 1-year effective date for these types of packages only, or (2) provide that manufacturers may request a stay of enforcement so they can market their products in conventional packaging for the minimum period needed to obtain an adequate supply of senior-friendly packaging.

A final rule would apply to products that are packaged on or after the effective date.

H. Regulatory Flexibility Act Certification

When an agency undertakes a rulemaking proceeding, the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, generally requires the agency to prepare proposed and final regulatory flexibility analyses describing the impact of the rule on small businesses and other small entities. Section 605 of the Act provides that an agency is not required to prepare a regulatory flexibility analysis if the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The Commission's Directorate for Economic Analysis prepared a preliminary assessment of the impact of a rule to require special packaging for household products containing fluoride with more than 50 mg elemental fluoride and more than 0.5 percent elemental fluoride (w/v or w/w). The staff also considered the impact of a rule modifying the current exemption for oral prescription drugs containing sodium fluoride so that it would be consistent with the level proposed for household products.[3]

This assessment reports that the staff is aware of 25 suppliers of products that are in categories of products that may contain fluorides. Fourteen of these companies may be small businesses. It is unclear which of these products actually contain fluorides and are marketed directly to consumers rather than commercial markets. The staff is also aware of 40 suppliers of automotive and household cleaning chemicals and products. Some of these products may contain fluoride.[3] The Commission requests comments from companies that supply fluoride-containing household products. The Commission is particularly interested in comments and information on the likely effect of this proposed rule on small businesses.

Several consumer products containing fluoride are already in CR packaging. For example, senior friendly packaging is used by a small business marketer of a fluoride-containing rust remover packaged in a plastic container with a continuous turn closure. Another small business, marketing a fluoride-containing glass etching cream, also uses senior-friendly CR packaging. However, the small business marketer of another glass etching product is not currently using CR packaging. A variety of types of senior friendly CR packaging that would be suitable for such products are readily available at prices competitive with non-CR packaging. Similarly, of the three known marketers of fluoride-containing wheel cleaners, one (a large manufacturer) is using CR packaging, while another (a small business) is not. Senior-friendly trigger sprays like those used for this product are available. The incremental cost of a CR trigger is not likely to be large relative to the retail cost of the product.[3]

Based on this assessment, the Commission concludes that the proposed requirement for fluoride-containing household products would not have a significant impact on a substantial number of small businesses or other small entities.

Furthermore, the proposed modification in the level for exemption of oral prescription drugs containing sodium fluoride is not likely to affect any currently available prescription drugs, and if such drugs should become available in the future appropriate CR packaging is readily available at prices competitive with non-CR packaging. Therefore, the Commission concludes that the proposed modification to the exemption for oral prescription drugs containing sodium fluoride would not have a significant impact on a substantial number of small businesses or other small entities.

I. Environmental Considerations

Pursuant to the National Environmental Policy Act, and in accordance with the Council on Environmental Quality regulations and CPSC procedures for environmental review, the Commission has assessed the possible environmental effects associated with the proposed PPPA requirements for fluoride-containing products.

The Commission's regulations state that rules requiring special packaging for consumer products normally have little or no potential for affecting the human environment. 16 CFR 1021.5(c)(3). Nothing in this proposed rule alters that expectation. Therefore, because the rule would have no adverse effect on the environment, neither an environmental assessment nor an environmental impact statement is required.

J. Executive Orders

According to Executive Order 12988 (February 5, 1996), agencies must state in clear language the preemptive effect, if any, of new regulations.

The PPPA provides that, generally, when a special packaging standard issued under the PPPA is in effect, ''no State or political subdivision thereof shall have any authority either to establish or continue in effect, with respect to such household substance, any standard for special packaging (and any exemption therefrom and requirement related thereto) which is not identical to the [PPPA] standard.'' 15 U.S.C. 1476(a). A State or local standard may be excepted from this preemptive effect if (1) the State or local standard provides a higher degree of protection from the risk of injury or illness than the PPPA standard; and (2) the State or political subdivision applies to the Commission for an exemption from the PPPA's preemption clause and the Commission grants the exemption through a process specified at 16 CFR Part 1061. 15 U.S.C. 1476(c)(1). In addition, the Federal government, or a State or local government, may establish and continue in effect a non-identical special packaging requirement that provides a higher degree of protection than the PPPA requirement for a household substance for the Federal, State or local government's own use. 15 U.S.C. 1476(b).

Thus, with the exceptions noted above, the proposed rule requiring CR packaging for household products containing fluoride above the regulated level and modifying the exemption level for oral prescription drugs with sodium fluoride would preempt non-identical

state or local special packaging standards for such fluoride containing products.

In accordance with Executive Order 12612 (October 26, 1987), the Commission certifies that the proposed rule does not have sufficient implications for federalism to warrant a Federalism Assessment.

List of Subjects in 16 CFR Part 1700

Consumer protection, Drugs, Infants and children, Packaging and containers, Poison prevention, Toxic substances.

For the reasons given above, the Commission proposes to amend 16 CFR part 1700 as follows:

PART 1700—[AMENDED]

1. The authority citation for part 1700 continues to read as follows:

Authority: Pub. L. 91–601, secs. 1–9, 84 Stat. 1670–74, 15 U.S.C. 1471–76. Secs 1700.1 and 1700.14 also issued under Pub. L. 92–573, sec. 30(a), 88 Stat. 1231, 15 U.S.C. 2079(a).

2. Section 1700.14 is amended to revise paragraph (a)(10)(vii) and to add paragraph (a)(27) to read as follows (although unchanged, the introductory text of paragraphs (a) and (10) are included below for context):

§ 1700.14 Substances requiring special packaging.

(a) *Substances.* The Commission has determined that the degree or nature of the hazard to children in the availability of the following substances, by reason of their packaging, is such that special packaging meeting the requirements of § 1700.20(a) is required to protect children from serious personal injury or serious illness resulting from handling, using, or ingesting such substances, and the special packaging herein required is technically feasible, practicable, and appropriate for these substances:

* * * * *

(10) *Prescription drugs.* Any drug for human use that is in a dosage form intended for oral administration and that is required by Federal law to be dispensed only by or upon an oral or written prescription or a practitioner licensed by law to administer such drug shall be packaged in accordance with the provisions of § 1700.15 (a), (b), and (c), except for the following:

* * * * *

(vii) Sodium fluoride drug preparations including liquid and tablet forms, containing not more than 110 milligrams of sodium fluoride (the equivalent of 50 mg of elemental fluoride) per package and not more than a concentration of 0.5 percent elemental fluoride on a weight-to-volume basis for liquids or a weight-to-weight basis for non-liquids and containing no other substances subject to this § 1700.14(a)(10).

* * * * *

(27) *Fluoride.* Household substances containing more than the equivalent of 50 milligrams of elemental fluoride per package and more than the equivalent of 0.5 percent elemental fluoride on a weight-to-volume basis for liquids or a weight-to-weight basis for non-liquids shall be packaged in accordance with the provisions of § 1700.15 (a), (b) and (c).

Dated: November 17, 1997.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

List of Relevant Documents

1. Briefing memorandum from Jacqueline Ferrante, Ph.D., EH, to the Commission, ''Proposed Rule to Require Child-Resistant Packaging for Household Products with Fluoride,'' September 30, 1997.

2. Memorandum from Susan C. Aitken, Ph.D., EH, to Jacqueline Ferrante, Ph.D., EH, ''Toxicity of Household Products Containing Fluoride,'' August 4, 1997.

3. Memorandum from Marcia P. Robins, EC, to Jacqueline Ferrante, Ph.D., EH, ''Market Data, Economic Considerations and Environmental Effects of a Proposal to Require Child-Resistant Packaging for Household Products Containing Fluoride,'' June 20, 1997.

4. Memorandum from Charles Wilbur, EH, to Jacqueline Ferrante, Ph.D., EH, ''Technical Feasibility, Practicability, and Appropriateness Determination for the Proposed Rule to Require Child-Resistant Packaging for OTC Products Containing Fluoride,'' June 27, 1997.

[FR Doc. 97–30555 Filed 11–19–97; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230, 240 and 270

[Release Nos. 33–7475, 34–39321, IC–22884; File No. S7–27–97]

RIN 3235–AG98

Delivery of Disclosure Documents to Households

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Commission is proposing for public comment a new rule under the Securities Act of 1933 to enable issuers and broker-dealers to satisfy the Act's prospectus delivery requirements, with respect to two or more investors sharing the same address, by sending a single prospectus, subject to certain conditions. The Commission is proposing similar amendments to the rules under the Securities Exchange Act of 1934 and the Investment Company Act of 1940 that govern the delivery of annual and (in the case of investment companies) semiannual reports to shareholders. The proposed rule and rule amendments seek to provide greater convenience for investors and cost savings for issuers by reducing the amount of duplicative information that investors receive.

DATES: Comments must be received on or before February 2, 1998.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 5th Street, N.W., Stop 6–9, Washington, D.C. 20549. Comments also may be submitted electronically at the following E-mail address: rule-comments@sec.gov. All comment letters should refer to File No. S7–27–97; this file number should be included on the subject line if E-mail is used. Comment letters will be available for public inspection and copying in the Commission's Public Reference Room, 450 5th Street, N.W., Washington, D.C. 20549. Electronically submitted comment letters also will be posted on the Commission's Internet web site (http://www.sec.gov).

FOR FURTHER INFORMATION CONTACT: Marilyn Mann, Senior Counsel, at (202) 942–0690, Office of Regulatory Policy, Division of Investment Management, Stop 10–2, or Elizabeth M. Murphy, Special Counsel, at (202) 942–2900, Office of Chief Counsel, Division of Corporation Finance, Stop 4–2, Securities and Exchange Commission, 450 5th Street, N.W., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Commission today is requesting public comment on proposed rule 154 under the Securities Act of 1933 (15 U.S.C. 77a) (the ''Securities Act'') and proposed amendments to rules 14a–3 (17 CFR 240.14a–3), 14c–3 (17 CFR 240.14c–3) and 14c–7 (17 CFR 240.14c–7) under the Securities Exchange Act of 1934 (15 U.S.C. 78a) (the ''Exchange Act''), and rules 30d–1 (17 CFR 270.30d–1) and 30d–2 (17 CFR 270.30d–2) under the Investment Company Act of 1940 (15 U.S.C. 80a) (the ''Investment Company Act'').

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I. Discussion

The Securities Act generally prohibits an issuer or underwriter from delivering a security for sale unless a prospectus meeting certain requirements accompanies or precedes the security.[1] If several persons purchase the same security and share the same household, the prospectus delivery requirements may result in the mailing of multiple copies of the same prospectus to a household.

Although the proposed rule is not limited to investment company prospectuses, the problem of delivery of multiple prospectuses is particularly significant in the case of open-end management investment companies (''mutual funds''),[2] and has grown as the popularity of mutual funds as an investment vehicle for many families has increased.[3] The same mutual fund may be used by a family as a regular investment as well as for family members' individual retirement accounts, 401(k) or other tax-deferred retirement plans, and for trusts or accounts established for the benefit of minor children. Although one family member may make investment decisions on behalf of each family, a fund that delivers an updated prospectus to investors annually must deliver a copy to each family member in whose name shares are purchased.

Mutual funds, closed-end management investment companies (collectively, ''funds'') and certain unit investment trusts (''UITs'') are required by Commission rules to send semiannual reports to their security holders.[4] The problem of delivery of duplicate documents to a household frequently arises with respect to these reports.[5] Public companies that are not investment companies also are required to furnish security holders an annual report that accompanies or precedes the delivery of a proxy or information statement.[6] Sending multiple copies of the same document to investors who share the same address often inundates households with extra mail, annoys investors, and results in higher printing and mailing costs for issuers, underwriters and other broker-dealers. In many cases, these costs are ultimately borne by investors.

To reduce the number of duplicative disclosure documents delivered to investors, the Commission is proposing rules to permit, under certain circumstances, delivery of a single prospectus or shareholder report to a household (''householding'') to satisfy the applicable delivery requirements. Proposed rule 154 under the Securities Act, and proposed amendments to rules 30d–1 and 30d–2 under the Investment Company Act and to rules 14a–3, 14c–3 and 14c–7 under the Exchange Act, would provide that delivery of a disclosure document to one investor would be deemed to have occurred with respect to all other investors who share the same address, provided certain conditions are met. The conditions are designed to assure that every security holder in the household either receives or has convenient access to a copy of the prospectus or report delivered to a member of the household.

A. Delivery of Prospectuses to a Household

1. Scope of Rule and General Conditions

Under proposed rule 154, a prospectus would be deemed delivered, for purposes of sections 5(b) and 2(a)(10) of the Securities Act, to all investors at a shared address if the person relying on the rule delivers the prospectus to a natural person who shares that address and the other investors consent to delivery of a single prospectus.[7] The proposed rule would be available for all persons who have a prospectus delivery obligation under the Securities Act except when the prospectus is required to be delivered in connection with business combination transactions, exchange offers or reclassifications of securities.[8] Those prospectuses generally are accompanied by proxies or tender offer material that must be executed by each individual investor. Comment is requested whether companies should be permitted to rely on the rule for delivery of those types of prospectuses. Are there other types of prospectuses that rule 154 should not cover? Should the rule be limited to fund prospectuses?

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[1] *See* Securities Act sections 2(a)(10), 4(1), 5(b) (15 U.S.C. 77b(a)(10), 77d(1), 77e(b)). In connection with secondary market transactions in certain securities, a dealer may also be required to deliver a prospectus for a specified period after the commencement of the offering. *See* Securities Act section 4(3) (15 U.S.C. 77d(3)); rule 174 (17 CFR 230.174). Dealers selling shares of open-end management investment companies or units of unit investment trusts (''UITs'') are required to deliver a prospectus if the issuer (including the sponsor of a UIT) is currently offering shares or units for sale. Investment Company Act section 24(d) (15 U.S.C. 80a–24(d)); *see also* Form N–7 for Registration of Unit Investment Trusts Under the Securities Act of 1933 and the Investment Company Act of 1940, Investment Company Act Release No. 15612 (Mar. 9, 1987) (52 FR 8268, 8269 (Mar. 17, 1987)) (because the sponsor of a UIT is considered to be an issuer of the UIT's units under section 2(a)(4) of the Securities Act, resales of units by the sponsor must be made pursuant to a prospectus).

[2] Mutual funds generally offer their shares on a continuous basis and, as a result, are required to file periodic ''post-effective'' amendments to their registration statements in order to maintain a ''current'' prospectus required by section 10(a)(3) of the Securities Act (15 U.S.C. 77j(a)(3)). Post-effective amendments also satisfy the requirement that mutual funds amend their Investment Company Act registration statements annually. *See* 17 CFR 270.8b–16. The Securities Act requires mutual funds to send updated prospectuses only to those shareholders who make additional purchases. (A reinvestment through a dividend reinvestment plan generally does not trigger this obligation.) In practice, many mutual funds send an updated prospectus annually to all of their shareholders. Because closed-end funds do not offer their shares to the public on a continuous basis, they generally do not update their prospectuses periodically. *See* Division of Investment Management, SEC, Protecting Investors: A Half Century of Investment Company Regulation 354 (1992) (discussing greater effect of Securities Act prospectus delivery requirements on mutual funds as compared to other issuers); *see also* Staff Interpretive Position Relating to Fiduciary Duty of Directors of a Registered Investment Company in Connection with Proposed Arrangement to Impose Sales Load on Reinvestment of Income Dividends and Continuously Offer Fund Shares Only in Connection with Dividend Reinvestments, Investment Company Act Release No. 6480 (May 10, 1971) (36 FR 9627 (May 27, 1971)).

[3] An estimated 63 million individuals, making up 36.8 million households, owned mutual funds either directly or through a retirement plan as of April 1996. Fund-owning households represented 37 percent of all U.S. households. Investment Company Institute, *Mutual Fund Ownership in the U.S.*, Fundamentals, Dec. 1996, at 1.

[4] *See* Investment Company Act section 30(e) (15 U.S.C. 80a–29(e)); rule 30d–1 (17 CFR 270.30d–1). UITs that invest substantially all of their assets in shares of a fund must send their unitholders annual and semiannual reports containing financial information on the underlying fund. *See* Investment Company Act section 30(e) (15 U.S.C. 80a–29(e)); rule 30d–2 (17 CFR 270.30d–2).

[5] The Commission staff has issued no-action letters permitting just one copy of a fund's shareholder report to be sent to shareholders who share the same address. *See* Oppenheimer Funds, SEC No-Action Letter (July 20, 1994); Scudder Group of Funds, SEC No-Action Letter (June 19, 1990); *see also* Allstate Enterprises Stock Fund, Inc., SEC No-Action Letter (July 22, 1973). The funds' letters requesting relief noted shareholder complaints about duplicate reports and sought to reduce printing and mailing expenses.

[6] The proxy rules currently include provisions that allow registrants to send a single annual report to security holders sharing the same address under certain conditions. Rule 14a–3(e) (17 CFR 240.14a–3(e)); Note 2 to rule 14c–7 (17 CFR 240.14c–7 note 2); see also 2 N.Y.S.E. Guide (CCH) ¶¶ 2451.90, 2451.95, 2465.20, 2465.25 (New York Stock Exchange rules permitting householding).

[7] Proposed rule 154(a).

[8] The proposed rule would not apply to the delivery of a prospectus filed as part of a registration statement on Form N–14, S–4 or F–4, or to the delivery of any other prospectus in connection with a business combination transaction, exchange offer or reclassification of securities. *See* 17 CFR 239.23, 239.25, 239.34; proposed rule 154(e).

For purposes of the rule, the term ''address'' would not be limited to a postal address and could include an electronic address.[9] Thus, investors who share an electronic mail address could consent to receive one prospectus at the shared address even if they had different postal addresses.[10] Conversely, investors who share a street address could consent to the delivery of one prospectus to the household, and an investor could receive the prospectus electronically, even if the other investors do not share that investor's electronic address.

An investor may give limited consent to the householding of prospectuses for a particular security only, or may give general consent concerning any prospectuses that an issuer, underwriter, or dealer has or will have an obligation to deliver.[11] So that an investor has the capacity to notify other members of the household that the prospectus is available, the proposed rule would require that the prospectus be addressed to a natural person.[12]

The notion of a household under the rule would not be limited to a family unit or a residence. Any group of persons who share the same address could be delivered a single prospectus as long as each investor provides written consent. The proposed rule, for example, would permit the delivery of a single prospectus for multiple investors at a shared business address, or for investors that include a business entity. The rule therefore should afford significant flexibility for persons that have a prospectus delivery obligation.

The rule also does not require that a prospectus be delivered to an investor at the address that is shared with the other investors. If two investors live in the same house and consent to householding, for example, a prospectus could be delivered to the address where one investor receives his or her mail, such as a business address or a post office box. Comment is requested whether the rule should require that the prospectus be delivered to the investors' shared address.

As explained above, delivery to a natural person would facilitate the sharing of the prospectus among the investors at the shared address. In order to allow for changing the investor who receives the prospectus (*e.g.*, if the investor moves to a different address), the investors at the shared address would consent to the manner of prospectus delivery specified in the rule without designating the specific person to whom the prospectus will be delivered. The Commission requests comment whether the rule should require the investors to specify the name of the investor who will receive the prospectus. Comment is also requested whether there should be any restrictions on who can receive a prospectus on behalf of the other investors. For example, should that investor be required to be an adult?

The proposed rule would not permit delivery of a prospectus to a group of persons (*e.g.*, ''The Smith household,'' or ''ABC Stock Fund Shareholders''). The Commission is concerned that the use of such general addressing may reduce the likelihood that a prospectus will be opened and read (because the person receiving it may assume it is ''junk mail'').[13] In addition, addressing the prospectus to a family-name household could increase the risk that someone other than an investor may receive it. The Commission requests comment on the advantages and disadvantages of addressing a document to a particular person in a household and whether the rule should permit the prospectus to be addressed to a group of persons in the household.

Comment also is requested on the proposed application of the rules when documents are delivered electronically. In order to satisfy delivery requirements, a person relying on the rule also may obtain consent, from an investor who receives a prospectus, concerning delivery through a specified electronic medium.[14] If the investor decides to receive the prospectus electronically, should the other investors in the household also have to consent to electronic delivery to that investor?

2. Householding Without Written Consent

Consent may be difficult to obtain, even from persons who presumably would wish to consent to the delivery of documents to another person in their household. Many investors may not respond to requests for consent, and thus many of the benefits of householding would not be realized. At the same time, householding without consent creates the risk that an investor who wishes to receive a prospectus will not receive one. Therefore, the Commission is proposing to permit householding without consent only under certain conditions *and* only if the investors have opened an account with the person relying on the rule before the effective date of the rule.

The conditions are designed to limit householding to circumstances that suggest that the investors not receiving the disclosure documents would wish to consent and that they will have access to the prospectus if delivered to another investor. Under the proposal, the investors in the household would have to be provided with notice, 60 days before initial reliance on the rule, that future prospectuses will be delivered to only one person who shares the address.[15] In addition, the investors in

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[9] ''Address'' would be defined to include ''a street address, a post office box number, an electronic mail address, a facsimile telephone number or other similar destination to which paper or electronic documents are delivered, unless otherwise provided in this section.'' Proposed rule 154(f). The Commission has issued two interpretive releases expressing its views on the electronic delivery of documents, including prospectuses and investment company annual and semiannual reports (the ''Interpretive Releases''). Use of Electronic Media for Delivery Purposes, Securities Act Release No. 7233 (Oct. 6, 1995) [60 FR 53458 (Oct. 13, 1995)] (''1995 Interpretive Release''); Use of Electronic Media by Broker-Dealers, Transfer Agents, and Investment Advisers for Delivery of Information; Additional Examples Under the Securities Act of 1933, Securities Exchange Act of 1934, and Investment Company Act of 1940, Securities Act Release No. 7288 (May 9, 1996) [61 FR 24644 (May 15, 1996)] (''1996 Interpretive Release''); *see also* Howard M. Friedman, Securities Regulation in Cyberspace (1997).

The Interpretive Releases discuss issues of notice and access that should be considered in determining whether the legal requirements pertaining to delivery of documents have been satisfied. The releases state that persons using electronic delivery of information should obtain informed consent from the intended recipient or otherwise have reason to believe that any electronic means so selected will result in satisfaction of the delivery requirements. *See* 1995 Interpretive Release, *supra*, at 53460–61; 1996 Interpretive Release, *supra*, at 24646–47. In the case of a passive delivery system such as an Internet web site, the proposed rule would permit delivery of a notice of the availability of the prospectus on the web site to a single investor at the shared address. The conditions of the proposed rule and the requirements for electronic delivery would both have to be satisfied. The National Association of Securities Dealers also has issued guidance on the use of electronic communications. *See, e.g.*, NASD Notice to Members 96–50 (July 1996).

[10] By contrast, certain rule provisions permitting delivery without written consent under the rule would require that the investors share a street address that meets certain requirements. *See* proposed rule 154(b)(5)(i), (iii); *see infra* part I.A.2.

[11] Thus, for example, the distributor for a family of mutual funds could obtain consent from persons that share an address with respect to all funds in the family of funds, including funds that may be created in the future. With respect to non-investment companies, a security holder could give limited consent to a broker-dealer concerning delivery of a particular security or general consent concerning any prospectuses that the broker-dealer has or will have an obligation to deliver.

[12] *See* proposed rule 154(a)(2).

[13] *See, e.g.*, Owen T. Cunningham (with George Wachtel), *Everything You Need to Know About Mailing Lists But Were Afraid to Ask!*, Bank Marketing, Mar. 1997, at 41, 44.

[14] *See* 1995 Interpretive Release, *supra* note 9, at 53460.

[15] The proposed rule would require the notice to be a separate written statement delivered to each investor in the household at least 60 days before

Continued

the household must have the same last name or, if they have different last names, a person who relies on the rule must reasonably believe they are members of the same family.[16] Finally, the prospectus must be delivered to a street address that the person reasonably believes is a residence.[17] Alternatively, the prospectus could be delivered to a shared post office box, or to an electronic address if the investors are reasonably believed to share a residence.[18]

The Commission requests comment whether the proposed conditions for householding without written consent give reasonable assurance that the prospectus will be available to all persons in the household who wish to review it. Should there be any additional safeguards? Do any of the conditions impose unnecessary costs? Comment is requested on the requirement that notice be given 60 days before reliance on the rule. Would a shorter or longer time period be more appropriate? Should any additional disclosure about prospectus delivery to the household be required after householding begins (*e.g.*, in future account statements)?

As discussed above, householding without consent would be limited to persons who established accounts before the effective date of the rule. The Commission presumes that after the effective date of the rule, persons who rely on the rule can establish procedures to obtain the consent of investors who open new accounts. Mutual fund distributors and other broker-dealers typically require prospective investors to select various account options at that time, disclose information to assist in suitability determinations, and provide other information necessary to establish an account.[19] Thus it seems reasonable to expect that there will be an adequate opportunity to request consent at that time.

The Commission requests comment generally on the appropriateness of permitting householding for purposes of prospectus delivery when investors have not given written consent. Are investors likely to ignore requests for written consent if they have already established an account? Comment is also requested whether the Commission's assumptions discussed above are correct, and whether most investors are likely to give general consent concerning any prospectuses that a person may have an obligation to deliver in the future.[20] Should the Commission permit householding without consent for accounts opened after the effective date of the rule?

3. Revocation of Consent

The proposed rule would require that, if an investor requests resumption of delivery of prospectuses, the person relying on the rule must resume individual delivery of future documents after 30 days.[21] Comment is requested on the time period for resuming individual delivery. Is 30 days an appropriate time period to accommodate revision of mailing lists, or should a shorter or longer time period be permitted?

B. Delivery of Shareholder Reports to a Household

The Commission is proposing amendments to rules 30d–1 and 30d–2 under the Investment Company Act to permit investment companies to deliver one shareholder report per household. The conditions for using the proposed amendments would be substantially the same as those in proposed rule 154.[22] The Commission staff has issued no-action letters addressing householding with respect to delivery of shareholder reports to fund shareholders.[23] Unlike the no-action letters, the proposed amendments would not require prospectus disclosure of an investment company's householding policies. Instead, the advance notice or written consent requirements would serve to notify shareholders about householding. Comment is requested whether householding for purposes of delivering investment company shareholder reports should be subject to different conditions than householding for purposes of prospectus delivery.

The Commission also is proposing similar amendments to Exchange Act proxy rules 14a–3, 14c–3, and 14c–7. The proxy rules currently provide that, in connection with the delivery of a proxy or information statement, a company is not required to send an annual report to a security holder of record having the same address as another security holder, if the security holders do not hold the company's securities in street name, at least one report is sent to a security holder at the address, and the holders to whom a report is not sent have consented in writing.[24] Because the amended rules would include an implied consent provision, a company would not have to receive written consent to householding from an investor who became a security holder before the date the amendments become effective.[25]

The amendments also would eliminate the requirement that the security holders not hold the securities in street name. It is expected that the requirement to transmit the annual report to a natural person who shares an address with other investors would

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delivery of the first document delivered in reliance on the rule. The notice would explain that each investor at the address could request to continue to receive his or her own copy of the prospectus, and the notice would be accompanied by a reply form and a convenient means for returning it. *See* proposed rule 154(b)(3); *see also infra* Part I.A.3. The notice could be enclosed in the same envelope with other printed matter, or could be transmitted electronically if the guidelines for electronic delivery were met. *See* 1995 Interpretive Release, *supra* note 9, at 53460–61.

[16] *See* proposed rule 154(b)(2).

[17] *See* proposed rule 154(b)(5)(i). A reasonable belief may be based on the address supplied by the shareholder and the Zip Code assigned to the address. *See* proposed rule 154(c).

Zip Codes are assigned to addresses by the United States Postal Service (the ''USPS''). The most complete Zip Code is a 9-digit number consisting of five numbers, a hyphen, and four numbers, which the USPS describes by its trademark ''ZIP+4®.'' The first five digits represent the five-digit Zip Code; the final four digits identify geographic units such as a side of a street between intersections, both sides of a street between intersections, a building, a floor or group of floors in a building, or a business. Many apartment buildings and businesses are assigned one or more unique ZIP+4® Codes. Domestic Mail Manual, at A010.2.1, A010.2.3, A010.3.2 (Sept. 1, 1995) (incorporated by reference at 39 CFR 111.1). Information on Zip Codes for particular addresses may be obtained through address matching software. *See id*. at A950. In addition, software is available through which the number of duplicates in a mailing can be reduced. *See, e.g.*, Owen T. Cunningham, *supra* note , at 41, 44; Raymond F. Melissa, *How to Save Money on Printing and Postage*, Nonprofit World, Mar./Apr. 1996, at 23; *How to Mail More, Mail Smarter, and Spend Less*, Nonprofit World, May/June 1995, at 26; United States Postal Service, National Customer Support Center <http://www.usps.gov/ncsc>.

[18] *See* proposed rule 154(b)(5)(ii), (iii).

[19] *See, e.g.*, Michael T. Reddy, Securities Operations 336–41 (2d ed. 1995) (discussing new account forms and procedures for opening new accounts).

[20] Investors may instead decline to consent or may be willing to give only a limited consent concerning prospectuses for a particular security only. *See supra* note and accompanying text.

[21] *See* proposed rule 154(d).

[22] *See* proposed rules 30d–1(f), 30d–2(b).

[23] *See, e.g.*, Oppenheimer Funds, *supra* note 5 (permitting householding of shareholders with the same last name and record address provided there is initial notice, prospectus disclosure concerning the practice, and opportunity for shareholders to opt out of householding); Scudder Group of Funds, *supra* note 5 (permitting householding of shareholders with the same record address under the same conditions).

[24] *See* rule 14a–3(e)(1) [17 CFR 240.14a–3(e)(1)]; Note 2 to rule 14c–7 [17 CFR 240.14c–7 note 2]. Rule 14c–7 contains requirements concerning registrants' obligations to provide copies of information statements and annual reports to brokers, banks and other intermediaries for forwarding to beneficial owners. The Commission proposes to delete the note to rule 14c–7 and add a householding provision to rule 14c–3, because rule 14c-3 contains the requirement that registrants furnish an annual report to security holders and is analogous to the rule 14a–3 provision.

[25] *See* proposed rule 14a–3(e)(1)(ii).

preclude registrants from householding reports to a street name intermediary.

Comment is requested whether householding for purposes of delivering annual reports of issuers other than investment companies should be subject to different conditions than householding for purposes of delivering investment company shareholder reports. Comment also is requested whether the conditions contained in the proposed amendments to rules 14a–3 and 14c–3 are appropriate. Should revised rules 14a–3 and 14c–3 require consent from investors who became security holders before the proposed rule amendments are effective?

C. General Request for Comment

Any interested persons wishing to submit written comments on the proposed rule and rule amendments that are the subject of this Release, to suggest additional provisions or changes to the rules, or to submit comments on other matters that might have an effect on the proposals contained in this Release, are requested to do so. The Commission also requests comment whether the proposals, if adopted, would have an adverse effect on competition that is neither necessary nor appropriate in furthering the purposes of the Exchange Act. The Commission requests comment whether the proposals, if adopted, would promote efficiency, competition, and capital formation. Comments will be considered by the Commission in compliance with its responsibilities under section 2(b) of the Securities Act,[26] section 2(c) of the Investment Company Act,[27] and sections 3(f) and 23(a) of the Exchange Act.[28] The Commission encourages commenters to provide empirical data or other facts to support their views.

II. Cost-Benefit Analysis

The Commission is sensitive to the costs and benefits imposed by its rules. The proposed rules would permit issuers and broker-dealers to send fewer copies of disclosure documents than they currently must send, and therefore, as discussed below, should provide substantial benefits to persons who have an obligation under the securities laws to deliver disclosure documents. The rules also are voluntary on the part of persons that have a delivery obligation; therefore, to the extent that the rules would require the printing and delivery of additional information concerning householding, or would result in other costs of changing procedures, and the costs outweigh the benefits of householding, persons with a delivery obligation may decide not to rely on the rules. The Commission requests comment on the costs and benefits of the rules. Specific data also is requested concerning the anticipated costs and benefits.

Based on preliminary information provided by two large mutual fund complexes, the Commission estimates that a prospectus costs approximately 45 cents to print and deliver, and a shareholder report costs approximately 52 cents to print and deliver.[29] In addition, the Commission estimates that, if a mutual fund were to deliver one prospectus to each household, the average decline in the number of prospectuses delivered would be between 10 and 30 percent. Currently there are approximately 150 million shareholder accounts investing in mutual funds.[30] For the purpose of calculating benefits, the Commission assumes that 50 percent of mutual funds deliver an updated prospectus to every shareholder each year, resulting in the 150 million shareholder accounts receiving a total of approximately 75 million updated prospectuses each year. Based on these estimates and assumptions, the potential annual benefit in reduced delivery of mutual fund prospectuses as a result of the proposed rules would be between $3.4 million and $10.1 million.

With respect to the delivery of annual and semiannual reports to mutual fund shareholders,[31] the Commission estimates that the average decline in the number of reports delivered would be between 10 and 30 percent. As stated above, there are approximately 150 million shareholder accounts investing in mutual funds. Each shareholder receives two shareholder reports per year per fund and, as stated above, each report costs an estimated 52 cents to print and deliver. Based on these estimates, the benefit would be between $15.6 million and $46.8 million. The net benefit would be less, depending on the number of mutual funds that currently deliver one report to each household, in reliance on prior staff no-action relief.

With respect to the delivery of prospectuses of issuers other than investment companies, the benefits of the rules probably would be less than the benefits discussed above, because these companies will continue to mail confirmations of sale to individual purchasers. The final prospectus would accompany or precede the confirmation. If more than one confirmation is delivered to a household, a company should be able to send one prospectus to an investor in the household, and send each other investor a confirmation without a prospectus. Based on preliminary data, the Commission estimates that the printing cost of each prospectus is approximately 15 cents. The Commission is unable to estimate the percentage of non-investment companies that would rely on proposed rule 154. The Commission requests any information that would be helpful in making such an estimate.

There are not likely to be significant costs and benefits associated with the amendment of the proxy rule provisions[32] permitting the householding of annual reports in connection with the delivery of proxy and information statements because the amended rules would be substantively similar to as the current provisions. Although the proposed rules would permit householding for certain investors without written consent, the Commission currently is unable to predict the reduction in annual reports delivered to investors that might result from this change.

Persons who rely on the rules would incur costs in obtaining consents from and sending notices to investors. As discussed above in part I.A.2, the Commission anticipates that after the effective date of the rule, procedures will be established to obtain the consent of investors who open new accounts. A portion of a new account form, for example, could explain householding briefly and request consent. Comment is requested on the costs of these new procedures.

The proposed rules would require that the notice be a separate written statement and be accompanied by a reply form. The notice could be enclosed in the same envelope with other printed matter (*e.g.*, an account statement, prospectus or report). Therefore, the costs associated with sending the notice should be limited to printing costs and some increased postage costs that may result from enclosing the notice and reply form in an envelope with other documents.

[26] 15 U.S.C. 77b(b).

[27] 15 U.S.C. 80a–2(c).

[28] 15 U.S.C. 78c(f), 78w(a).

[29] One of these fund complexes stated that the printing, postage, and handling costs for each prospectus for a large money market fund was 47 cents. The other complex provided similar costs for 6 of its funds, which ranged from 41 to 49 cents for prospectuses and 45 to 59 cents for annual reports. The midpoints of these ranges are 45 cents and 52 cents.

[30] Investment Company Institute, 1997 Mutual Fund Fact Book 111.

[31] *See* rules 30d–1 and 30d–2 under the Investment Company Act.

[32] *See* rules 14a–3, 14c–3, and 14c–7 under the Exchange Act.

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996,[33] the Commission also requests information regarding the potential impact of the proposed rule on the economy on an annual basis. Commenters are requested to provide empirical data to support their views.

III. Paperwork Reduction Act

Certain provisions of the proposed rule and rule amendments contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995,[34] and the Commission has submitted them to the Office of Management and Budget (''OMB'') for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The titles for the collections of information are: ''Rule 154 under the Securities Act of 1933, Delivery of prospectuses to investors at the same address''; ''Regulation 14A, Commission Rules 14a–1 through 14a–14 and Schedule 14A''; ''Regulation 14C, Commission Rules 14c–1 through 14c–7 and Schedule 14C''; ''Rule 30d–1 under the Investment Company Act of 1940, Reports to stockholders of management companies''; and ''Rule 30d–2 under the Investment Company Act of 1940, Reports to shareholders of unit investment trusts.'' Rule 30d–1, Regulation 14A and Regulation 14C, which the Commission is proposing to amend, contain currently approved collections of information under OMB control numbers 3235–0025, 3235–0059 and 3235–0057, respectively. An agency may not sponsor, conduct, or require response to an information collection unless a currently valid OMB control number is displayed.

Proposed rule 154 would permit, under certain circumstances, delivery of a single prospectus to a household to satisfy the prospectus delivery requirements of the Securities Act with respect to two or more investors in the household. The rule would require a person that relies on the rule to obtain the written consent of investors who will not receive prospectuses. Alternatively, for investors who established accounts with the sender before the effective date of the rule, a person that relies on the rule could send a notice to each investor stating that the investors in the household will receive one prospectus in the future unless they provide contrary instructions.

The purpose of the consent and notification requirements is to give reasonable assurance that all investors have access to the prospectus. Preparing and sending the notice is a collection of information. Because notices would only be sent to existing investors, companies that choose to rely on the rule would probably send them primarily in the first year after the rule is adopted. In addition, the Commission expects that, for cost reasons, the notice is likely to be a short, one-page statement that is enclosed with other written material sent to shareholders, such as account statements. Accordingly, the average annual number of burden hours spent preparing and arranging delivery of the notices is expected to be low. The Commission estimates 20 hours per respondent.

Although rule 154 is not limited to investment companies, the Commission believes that it would be used mainly by mutual funds and by broker-dealers that deliver mutual fund prospectuses. The Commission is unable to estimate the number of issuers other than mutual funds that would rely on the rule, and requests comment on this matter. There are approximately 2700 mutual funds, approximately 650 of which engage in direct marketing and therefore deliver their own prospectuses. The Commission estimates that each direct marketed mutual fund would spend an average of 20 hours per year complying with the notice requirement of the rule, for a total of 13,000 hours. The Commission estimates that there are approximately 750 broker-dealers that carry customer accounts and, therefore, may be required to deliver mutual fund prospectuses. The Commission estimates that each affected broker-dealer also will spend, on average, approximately 20 hours complying with the notice requirement of the rule, for a total of 15,000 hours. Therefore, the total number of respondents for rule 154 is 1400 (650 mutual funds plus 750 broker-dealers), and the estimated total hour burden is 28,000 hours (13,000 hours for mutual funds plus 15,000 hours for broker-dealers).

With respect to the amendments to rules 30d–1 and 30d–2 under the Investment Company Act, rule 30d–1 requires management investment companies to send annual and semiannual reports to their shareholders. Rule 30d–2 requires UITs that invest substantially all of their assets in shares of a management investment company to send their unitholders annual and semiannual reports containing financial information on the underlying company. The proposed amendments to rules 30d–1 and 30d–2 would permit householding for these shareholder reports under substantially the same conditions as those in rule 154.

Every registered management investment company is subject to the reporting requirements of rule 30d–1. As of August 1997, there were approximately 3220 registered management investment companies. The Commission currently estimates that the hour burden associated with rule 30d–1 is approximately 181 hours per company. As discussed above, the Commission estimates that the burden associated with the notice requirement of the amendments to rules 30d–1 and 30d–2 is approximately 20 hours per company. Therefore, the Commission estimates that the burden associated with rule 30d–1, including the burden of sending the notices, is 201 hours per company, or a total of 647,220 hours. In addition, the Commission estimates that the cost of contracting for outside services associated with the rule is $47,994 per respondent (421 hours times $114 per hour for independent auditor services), for a total cost of $154,540,680 ($47,994 times 3220 respondents).

Rule 30d–2 applies to approximately 500 UITs. The Commission estimates that the annual burden associated with rule 30d–2 is 120 hours per respondent, including the estimated 20 hours associated with the notice requirement contained in the proposed amendment to rule 30d–2. The total hourly burden is therefore approximately 60,000 hours. The Commission estimates that the annual financial cost of complying with rule 30d–2 (in addition to the hourly cost) is $9120 per respondent (80 hours times $114 per hour for independent auditor services), or a total of $4,560,000.

With respect to the amendments to rules 14a–3, 14c–3 and 14c–7, Regulations 14A and 14C are existing information collections that set forth proxy and information statement disclosure requirements. Companies that have a class of securities registered under section 12 of the Exchange Act are subject to these requirements. The Commission estimates that the time required to prepare and arrange delivery of the notice would be approximately 20 hours per respondent per year. The Commission estimates that 9321 respondents are subject to Regulation 14A and that approximately 932 of these would deliver the notice. The Commission estimates that the burden associated with Regulation 14A as revised per registrant delivering the notice would be approximately 105 hours, and 85 hours per registrant not delivering the notice, for a total annual burden of 810,925 hours. An estimated

[33] Pub. L. No. 104–121, Title II, 110 Stat. 857 (1996).

[34] 44 U.S.C. 3501–3520.

150 respondents are subject to Regulation 14C and it is estimated that 15 of these would deliver the notice. The estimated burden associated with Regulation 14C as revised per registrant delivering the notice is 105 hours, and 85 hours for a registrant not delivering the notice, for a total annual burden of 13,050 hours.

The information collection requirements imposed by the rules are required for those issuers or broker-dealers that decide to rely on the rule to obtain the benefit of sending fewer documents to each household. Those issuers or broker-dealers that decide not to obtain that benefit are not required to rely on the rule. Responses to the collection of information will not be kept confidential.

Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments in order to: (i) Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the agency's estimate of the burden of the proposed collections of information; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collections of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Persons wishing to submit comments on the collection of information requirements should direct them to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503; and (ii) Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 5th Street, N.W., Stop 6–9, Washington, D.C. 20549, with reference to File No. S7–27–97. OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication; therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

IV. Summary of Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis (''IRFA'') in accordance with 5 U.S.C. 603 regarding proposed rule 154 and proposed amendments to rules 14a–3, 14c–3, 14c–7, 30d–1 and 30d–2. The following summarizes the IRFA.

When two or more investors in a household purchase the same security, the prospectus delivery requirements of the Securities Act and shareholder report delivery rules under the Investment Company Act and Exchange Act may result in the mailing of multiple copies of the same document to the household. Sending multiple copies of the same document to investors who share the same address often inundates them with extra mail and results in higher costs for the senders.

To reduce the number of duplicative disclosure documents delivered to investors, the Commission is proposing rules to permit, under certain circumstances, delivery of a single prospectus or shareholder report to a household to satisfy the applicable delivery requirements. The Commission is proposing rule 154 pursuant to section 19(a) of the Securities Act, the amendments to rules 14a–3, 14c–3, and 14c–7 pursuant to sections 12, 14 and 23(a) of the Exchange Act, and the amendments to rules 30d–1 and 30d–2 pursuant to sections 30(e) and 38(a) of the Investment Company Act.

An issuer, other than an investment company, generally is a small entity if, on the last day of its most recent fiscal year, it had total assets of $5,000,000 or less and is engaged or proposing to engage in small business financing.[35] An issuer is considered to be engaged or proposing to engage in small business financing if it is conducting or proposing to conduct an offering of securities that does not exceed $5,000,000.[36] Most of these small issuers can conduct their offerings under Regulation A, which exempts offerings from the registration requirements of the Securities Act if the sum of all cash and other consideration to be received for the securities does not exceed $5,000,000, subject to a number of conditions.[37] Thus, the Commission estimates that among issuers other than investment companies, very few small issuers will be affected by rule 154.

An investment company generally is a small entity if it has net assets of $50,000,000 or less as of the end of its most recent fiscal year.[38] The Commission estimates that there are approximately (i) 2700 active registered open-end investment companies, of which 620 are small entities, (ii) 520 active registered closed-end investment companies, of which 46 are small entities, and (iii) 629 UITs, about 50 of which are small entities. Closed-end investment companies and UITs will be affected by rule 154 only if they are currently offering their shares.

A broker-dealer generally is a small entity if it has total capital (i.e., net worth plus subordinated liabilities) of less than $500,000 in its prior audited financial statements or, if it is not required to file such statements, on the last business day of the preceding fiscal year.[39] The delivery of prospectuses and shareholder reports is likely to be handled only by broker-dealers that carry public customer accounts. As of December 31, 1996, broker-dealers carrying public customer accounts numbered approximately 750 firms, 125 of which were small businesses.

Rule 30d–1 applies to registered management investment companies. It is estimated that out of approximately 3,220 active management investment companies, approximately 666 are considered small entities.[40] Rule 30d–2 applies to registered UITs, substantially all the assets of which consist of securities issued by a management investment company. It is estimated that out of approximately 500 registered UITs that are subject to rule 30d–2, approximately 20 are considered small entities.

Rule 0–10 under the Exchange Act defines the term ''small business'' as a company whose total assets on the last day of its most recent fiscal year were $5 million or less.[41] There are approximately 1000 reporting companies that have assets of $5 million or less.

Persons who rely on the rules would be required to either obtain written consent of householded persons or provide them with advance notice as specified in the rules. Those persons also must determine whether certain householded investors are natural persons and, for investors householded in accordance with the advance notice (rather than written consent) provisions, must have certain information concerning each householded investor's address. These requirements are designed to provide reasonable assurance that the prospectus or report will be made readily available to all investors at the address.

The Regulatory Flexibility Act directs the Commission to consider significant alternatives that would accomplish the stated objective, while minimizing any significant adverse impact on small entities. In connection with the proposed rule and proposed

[35] *See* 17 CFR 230.157.

[36] *Id.*

[37] *See* 17 CFR 230.251—230.263.

[38] *See* 17 CFR 230.157.

[39] *See* 17 CFR 240.0–10(c)(1).

[40] *See* 17 CFR 270.0–10.

[41] Rule 0–10 [17 CFR 240.0–10].

amendments, the Commission considered: (i) Establishing differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (ii) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (iii) the use of performance rather than design standards; and (iv) an exemption from coverage of the rule, or any part thereof, for such small entities.

The information persons would be required to have in order to rely on the rules without written consent is information that they already have or would be required to obtain in order to conduct mailings at reduced rates through the U.S. Postal Service. Other information, such as whether investors are natural persons, is readily available. Therefore, the Commission does not believe differing or simplified compliance or reporting requirements or timetables are necessary for small entities. In addition, differing requirements for small entities would not be consistent with investor protection and the purposes of section 5 of the Securities Act.

The proposed rules are designed to result in cost savings for all issuers and broker-dealers, while maintaining protections for investors. The Commission believes that small issuers and broker-dealers will generally rely on the rules in a particular instance only to the extent that cost savings can be achieved. The Commission also believes that the rules will not impose a burden on small entities. The rule, if relied upon, will lower burdens for small entities; thus, it is not appropriate or necessary to exempt small entities from the rule or any part of it.

The Commission encourages the submission of comments on matters discussed in the IRFA. Comment specifically is requested on the number of small entities that would be affected by the proposed rule and rule amendments. Comment also is requested on the impact of the rule and rule amendments on issuers and broker-dealers that are small entities. Commenters are asked to describe the nature of any impact and provide empirical data supporting the extent of the impact. These comments will be placed in the same public file as comments on the proposed rule and rule amendments themselves.

A copy of the IRFA may be obtained by contacting Marilyn Mann, Securities and Exchange Commission, 450 5th Street, N.W., Stop 10–2, Washington, D.C. 20549.

V. Statutory Authority

The Commission is proposing new rule 154 pursuant to the authority set forth in section 19(a) of the Securities Act [15 U.S.C. 77s(a)]. The Commission is proposing to amend rules 30d–1 and 30d–2 pursuant to the authority set forth in sections 30(e) and 38(a) of the Investment Company Act [15 U.S.C. 80a–29(e) and 80a–37(a)], and rules 14a–3, 14c–3, and 14c–7 pursuant to the authority set forth in sections 12, 14 and 23(a) of the Exchange Act [15 U.S.C. 78*l*, 78n and 78w(a)].

List of Subjects

17 CFR Parts 230 and 270

Investment companies, Reporting and recordkeeping requirements, Securities.

17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

Text of Proposed Rules

For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. The authority citation for Part 230 continues to read, in part, as follows:

Authority: 15 U.S.C. 77b, 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78*l*, 78m, 78n, 78o, 78w, 78*ll*(d), 79t, 80a–8, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

2. Section 154 is added to read as follows:

§ 230.154 Delivery of prospectuses to investors at the same address.

(a) *Delivery of a single prospectus.* If you must deliver a prospectus under the federal securities laws, for purposes of sections 5(b) and 2(a)(10) of the Act (15 U.S.C. 77e(b) and 77b(a)(10)), you will be considered to have delivered a prospectus to investors who share an address if:

(1) You deliver the prospectus to at least one of the investors, at any address of that investor;

(2) You address the prospectus to a natural person; and

(3) The other investors consent in writing to this manner of delivery.

(b) *Implied consent.* You do not need to obtain written consent from an investor if the following conditions are all met.

(1) The investor established an account with you before [effective date of the rule].

(2) The investor has the same last name as the investor to whom you delivered the prospectus, or you reasonably believe that the investors are members of the same family.

(3) You have sent the investor a notice at least 60 days before you begin to rely on this section concerning delivery of prospectuses to that investor. The notice must be a separate written statement, and must state that prospectuses will be delivered to only one investor at the shared address unless you receive contrary instructions. The notice must include a reply form that is easy to return and that includes the name and, if applicable, account number of the investor.

(4) You have not received the reply form from the investor indicating the investor wishes to receive the prospectus, within 60 days after you sent the notice.

(5) You deliver the prospectus to:

(i) A shared street address that you reasonably believe is a residence;

(ii) A shared post office box; or

(iii) An electronic address of the investor to whom the prospectus is delivered, if the investors share a street address that you reasonably believe is a residence.

(c) *Reasonable belief.* For purposes of paragraph (b)(5) of this section, you can reasonably believe that an address is a residence unless the investor provides any information, or the U.S. Postal Service assigns a Zip Code, that indicates to the contrary.

(d) *Revocation of consent.* If you receive a request from an investor that prospectuses be delivered directly to the investor in the future, you may not continue to rely on this section, with respect to that investor, for more than 30 days after you receive the request.

(e) *Exclusion of some prospectuses.* This section does not apply to the delivery of a prospectus filed as part of a registration statement on Form N–14 (17 CFR 239.23), Form S–4 (17 CFR 239.25) or Form F–4 (17 CFR 239.34), or to the delivery of any other prospectus in connection with a business combination transaction, exchange offer or reclassification of securities.

(f) *Definition of address.* For purposes of this section, *address* means a street address, a post office box number, an electronic mail address, a facsimile telephone number, or other similar destination to which paper or electronic documents are delivered, unless otherwise provided in this section. If you have reason to believe that the address is a street address of a multi-unit building (for example, based on the Zip Code), the address must include the unit number.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

3. The authority citation for Part 240 continues to read, in part, as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z-2, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78f, 78i, 78j, 78k, 78k-1, 78*l*, , 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*(d), 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

4. Section 14a–3 is amended by revising paragraph (e)(1) and the introductory text of paragraph (e)(2) to read as follows:

§ 240.14a–3 Information to be furnished to security holders.

* * * * *

(e)(1)(i) A registrant will be considered to have delivered an annual report to security holders of record who share an address if:

(A) The registrant delivers the annual report to at least one of the security holders, at any address of that security holder;

(B) The registrant addresses the prospectus to a natural person; and

(C) The other security holders consent in writing to this manner of delivery.

(ii) The registrant need not obtain written consent from a security holder if the following conditions are all met.

(A) The security holder first purchased securities of the registrant before [effective date of the rule].

(B) The security holder has the same last name as the security holder to whom the registrant delivered the annual report, or the registrant reasonably believes that the security holders are members of the same family.

(C) The registrant has sent the security holder a notice at least 60 days before the registrant begins to rely on this section concerning delivery of annual reports to that security holder. The notice must be a separate written statement, and must state that annual reports will be delivered to only one investor at the shared address unless the registrant receives contrary instructions. The notice must include a reply form that is easy to return and that includes the name and, if applicable, account number of the security holder.

(D) The registrant has not received the reply form from the security holder indicating the security holder wishes to receive the annual report, within 60 days after the registrant sent the notice.

(E) The registrant sends the report to:

(*1*) A shared street address that the registrant reasonably believes is a residence;

(*2*) A shared post office box; or

(*3*) An electronic address of the security holder to whom the report is sent, if the security holders share a street address that the registrant reasonably believes is a residence.

(iii) For purposes of paragraph (e)(1)(ii)(E) of this section, the registrant can reasonably believe that an address is a residence unless the security holder provides any information, or the U.S. Postal Service assigns any Zip Code, that indicates to the contrary.

(iv) If the registrant receives a request from a security holder that the annual report be sent directly to the security holder in the future, the registrant may not continue to rely on this section, with respect to that security holder, for more than 30 days after the registrant receives the request.

Note to paragraph(e)(1). For purposes of this section, the term *address* means a street address, a post office box number, an electronic mail address, a facsimile telephone number, or other similar destination to which paper or electronic documents are delivered, unless otherwise provided in this section. If the registrant has reason to believe that the address is a street address of a multi-unit building (for example, based on the Zip Code), the address must include the unit number.

(2) Notwithstanding paragraphs (a) and (b) of this section, unless state law requires otherwise, a registrant is not required to send an annual report or proxy statement to a security holder if:

* * * * *

5. In § 240.14c–3, paragraph (c) is added to read as follows:

§ 240.14c–3 Annual report to be furnished security holders.

* * * * *

(c) A registrant will be considered to have delivered an annual report to security holders of record who share an address if the requirements set forth in § 240.14a–3(e)(1) are satisfied.

6. In § 240.14c–7, Note 2 is removed and Notes 3 and 4 are redesignated as Notes 2 and 3.

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

7. The authority citation for Part 270 continues to read, in part, as follows:

Authority: 15 U.S.C. 80a–1 *et seq.*, 80a–37, 80a–39 unless otherwise noted;

* * * * *

8. Section 30d–1 is amended by adding paragraph (f) to read as follows:

§ 270.30d–1 Reports to stockholders of management companies.

* * * * *

(f)(1) A company will be considered to have transmitted a report to shareholders who share an address if:

(i) The company transmits the report to at least one of the shareholders, at any address of that shareholder;

(ii) The company addresses the report to a natural person; and

(iii) The other shareholders consent in writing to this manner of delivery.

(2) The company need not obtain written consent from a shareholder if the following conditions are all met.

(i) The shareholder first purchased securities of the company before [effective date of the rule].

(ii) The shareholder has the same last name as the shareholder to whom the company delivered the report, or the company reasonably believes that the shareholders are members of the same family.

(iii) The company has transmitted a notice to the shareholder at least 60 days before the company begins to rely on this section concerning transmission of reports to that shareholder. The notice must be a separate written statement, and must state that reports will be delivered to only one shareholder at the shared address unless the company receives contrary instructions. The notice must include a reply form that is easy to return and that includes the name and, if applicable, account number of the shareholder.

(iv) The company has not received the reply form from the shareholder indicating the shareholder wishes to receive the report, within 60 days after the company sent the notice.

(v) The company transmits the report to:

(A) A shared street address that the company reasonably believes is a residence;

(B) A shared post office box; or

(C) An electronic address of the shareholder to whom the report is transmitted, if the shareholders share a street address that the company reasonably believes is a residence.

(3) For purposes of paragraph (f)(2)(v) of this section, the company can reasonably believe that an address is a residence unless the shareholder provides any information, or the U.S. Postal Service assigns a Zip Code, that indicates to the contrary.

(4) If the company receives a request from a shareholder that reports be transmitted directly to the shareholder in the future, the company may not continue to rely on this section, with respect to that shareholder, for more than 30 days after the company receives the request.

(5) For purposes of this section, *address* means a street address, a post

office box number, an electronic mail address, a facsimile telephone number, or other similar destination to which paper or electronic documents are transmitted, unless otherwise provided in this section. If the company has reason to believe that the address is a street address of a multi-unit building (for example, based on the Zip Code), the address must include the unit number.

9. Section 30d–2 is revised to read as follows:

§ 270.30d–2 Reports to shareholders of unit investment trusts.

(a) At least semiannually every registered unit investment trust substantially all the assets of which consist of securities issued by a management company must transmit to each shareholder of record (including record holders of periodic payment plan certificates), a report containing all the applicable information and financial statements or their equivalent, required by § 270.30d–1 to be included in reports of the management company for the same fiscal period. Each such report must be transmitted within the period allowed the management company by § 270.30d–1 for transmitting reports to its stockholders.

(b) Any report required by this section will be considered transmitted to a shareholder of record if the unit investment trust satisfies the conditions set forth in § 270.30d–1(f) with respect to that shareholder.

By the Commission.

Dated: November 13, 1997.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–30430 Filed 11–19–97; 8:45 am]

BILLING CODE 8010–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AZ–MA–002–CGB; FRL–5925–6]

Approval and Promulgation of State Implementation Plans; Arizona—Maricopa County Ozone and PM_{10} Nonattainment Areas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Arizona on September 15, 1997, establishing Cleaner Burning Gasoline (CBG) fuel requirements for gasoline distributed in the Phoenix (Maricopa County) ozone nonattainment area. Arizona has developed these fuel requirements to reduce emissions of volatile organic compounds (VOC) and particulates (PM_{10}) in accordance with the requirements of the Clean Air Act (CAA). EPA is proposing to approve Arizona's fuel requirements into the Arizona SIP because either they are not preempted by federal fuels requirements or to the extent that they are or may be preempted, since EPA is proposing to find that the requirements are necessary for the Maricopa area to attain the national ambient air quality standards (NAAQS) for ozone and particulates.

DATES: Comments on this proposed rule must be received in writing by December 22, 1997.

ADDRESSES: Written comments should be sent to the Region IX contact listed below. Copies of the SIP revision are available in the docket for this rulemaking, which is open for public inspection at the addresses below. A copy of this notice is also available on EPA Region IX's website at http://www.epa.gov/region09.

Air Planning Office (AIR–2), Air Division, Region IX, U.S. Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105

Arizona Department of Environmental Quality, Office of Outreach and Information, First Floor, 3033 N. Central Avenue, Phoenix, Arizona 85012.

FOR FURTHER INFORMATION CONTACT: Karina O'Connor, Air Planning Office, AIR–2, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1247.

SUPPLEMENTARY INFORMATION:

I. Background

A. Arizona CBG

The State CBG fuel program for the Maricopa area establishes limits on gasoline properties and gasoline emission standards which will reduce emissions of volatile organic compounds (VOCs), oxides of nitrogen (NO_X), carbon monoxide (CO) and particulates (PM). Under the program, a variety of different fuels will be able to meet the fuel standards during different implementation periods (see Table 1). Starting June of 1998 through September 30, 1998, gasoline sold in Maricopa County must meet standards similar to EPA's Phase I reformulated gas (RFG) program or California's Phase II RFG program. Under the EPA Phase I RFG standards, the Arizona Department of Environmental Quality (ADEQ) estimates that VOC emissions will be reduced by 8.7 tons per summer day (tpsd), NO_X emissions by 0.2 tpsd, CO emissions by 118.6 tpsd and PM_{10} emissions by 0.27 tpsd. With California RFG, ADEQ estimates that VOC emissions will be reduced by 14.1 tpsd, NO_X emissions by 8.2 tpd, CO emission by 198 tpsd and PM_{10} by 0.76 tpsd.

California Phase II RFG can be used to comply with the Arizona fuel program during all implementation periods since, starting May 1, 1999, gasoline must meet standards similar to EPA's Phase II RFG program or California's RFG program. Under the CBG Type 1 standards, ADEQ estimates that VOC emissions will be reduced by 12.5 tpsd, NO_X emissions by 2.0 tpsd, CO emissions by 143.3 tpsd and PM_{10} by 0.4 tpsd.

TABLE 1.—FUEL TYPES MEETING ARIZONA CBG FUEL STANDARDS

Fuel type	Fuel designation	Implementation period
CBG Type 1	EPA's Phase II RFG	June 1999–Future.
CBG Type 2	California Phase II RFG	June 1998–Future.
CBG Type 3	EPA's Phase I RFG	June–September 30, 1998.

During both implementation periods, gasoline sold in the Maricopa area can comply with either of the two sets of specified standards included in the program. Therefore the actual emission reductions benefits during either period

are difficult to estimate without specific knowledge of the market penetration of each of the two acceptable fuels. However, emission reductions should, at a minimum, reach the levels that would result from the specific performance standards associated with CBG Types 1 and 3 during both periods because the corresponding CBG Type 2 standards are, in all instances, more stringent. These emissions reductions will help the Maricopa area attain the NAAQS for both ozone and particulates.

B. Clean Air Act Requirements

In determining the approvability of a SIP revision, EPA must evaluate the proposed revision for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans).

For SIP revisions addressing certain fuel measures, an additional statutory requirement applies. CAA section 211(c)(4)(A) prohibits state regulation of a fuel characteristic or component for which EPA has adopted a control or prohibition under section 211(c)(1), unless the state control is identical to the federal control. Section 211(c)(4)(C) provides an exception to this preemption if EPA approves the state requirements in a SIP. Section 211(c)(4)(C) states that the Administrator may approve preempted state fuel standards in a SIP:

* * * only if [s]he finds that the State control or prohibition is necessary to achieve the national primary or secondary ambient air quality standard which the plan implements. The Administrator may find that a State control or prohibition is necessary to achieve that standard if no other measures that would bring about timely attainment exist, or if other measures exist and are technically possible to implement, but are unreasonable or impracticable. The Administrator may make a finding of necessity even if the plan for the area does not contain an approved demonstration of timely attainment.

EPA's August 1997 ''Guidance on Use of Opt-in to RFG and Low RVP Requirements in Ozone SIPS'' gives further guidance on what EPA is likely to consider in making a finding of necessity.

C. History of Related Actions

Under the Clean Air Act Amendments of 1990, the Phoenix area was classified as a moderate nonattainment area for both ozone and PM_{10}. The moderate ozone attainment deadline was November 15, 1996; the moderate PM_{10} attainment deadline was December 31, 1994. In 1997, the Phoenix area was reclassified as serious for ozone with an attainment deadline of no later than November 15, 1999. In 1996, the Phoenix area was reclassified as serious for PM_{10} with an attainment deadline of no later than December 31, 2001.[1]

The State, the Maricopa County air pollution control agency, and the local jurisdictions in Maricopa County have adopted and implemented a broad range of ozone control measures including a summertime low Reid Vapor Pressure (RVP) limit of 7.0 psi for gasoline, an enhanced inspection and maintenance (I/M) program, stage II vapor recovery, an employer trip reduction program, many transportation control measures, and numerous stationary and area source VOC controls. On November 12, 1993, in support of one of these measures, the Arizona legislature passed section 13 of Arizona House Bill (HB) 2001 (1993 Special Session), originally codified in Arizona Revised Statutes (ARS) at section 41–2083(E).[2] This provision limited the maximum summer vapor pressure (or RVP) of gasoline fuel sold in the Maricopa area to 7.0 psi beginning May 31, 1995 through September 30, 1995, and applying from May 31 through September 30 of each year thereafter. Gasoline distributed in the Maricopa area by refineries, importers, carriers, retail stations and other end users who sell or dispense gasoline must meet the 7.0 psi limit during those periods.

On January 17, 1997, Governor Symington applied to EPA to include the Maricopa County ozone nonattainment area in the federal RFG program and the State submitted section 13 of HB 2001 to EPA as a SIP revision on April 29, 1997. Because this State fuel requirement established a control on RVP of 7.0 psi, not identical to the federal fuel RVP requirements applicable to the area (i.e., federal conventional gasoline RVP limit of 7.8 psi, federal phase I RFG RVP limit of 7.2 psi or federal phase II volatility limit of 7.8 psi), Arizona's fuel requirement was preempted under section 211(c)(4)(A) of the CAA. Pursuant to the Governor's letter and section 211(k)(6) of the CAA, EPA approved Governor Symington's request to opt in to the federal RFG program on June 3, 1997. 62 FR 30260. EPA also published a direct final approval of Arizona's low RVP SIP revision on June 11, 1997. 62 FR 31734. In approving the RVP SIP revision, EPA found under section 211(c)(4)(C) that the State's fuel requirement is necessary for the Maricopa area to attain the NAAQS for ozone.

The State also enacted HB 2307 which authorized the establishment of a more stringent State reformulated gasoline program.[3] HB 2307 was passed as an emergency measure, requiring ADEQ and the Arizona Department of Weights and Measures (ADWM) to adopt interim rules reflecting the fuel requirements included in the bill. The two agencies implemented a facilitated rulemaking process over the next three months which resulted in the publication of proposed rules on July 15, 1997 and a public hearing on August 15, 1997. ADEQ adopted these proposed rules as the Arizona CBG Interim Rule on September 12, 1997 following a public comment period.

C. State Submittal

In a September 12, 1997 letter, Russell Rhoades, Director, ADEQ, requested that EPA approve the CBG Interim Rule as a revision to the Arizona SIP and a CAA section 211(c)(4)(C) waiver. See ''Arizona Cleaner Burning Gasoline Interim Rule SIP Revision and Clean Air Act 211(c)(4)(C) Waiver Request,'' September 1997. The SIP revision package includes: (1) Arizona laws providing the State authority for submittal of SIP revisions; (2) a SIP completeness checklist; (3) the CBG Interim Rule; (4) a request for a waiver from federal preemption pursuant to CAA section 211(c)(4)(C); (5) a letter from the Arizona Attorney General concerning the status of the States authority to enforce the rule out-of-state; and (6) HB 2307.

As additional supporting technical documentation for the section 211(c)(4)(C) waiver request, the States CBG SIP submittal includes: (1) An Assessment of Fuel Formulation Options for Maricopa (see Attachment 3, Exhibit 2, Appendix A); (2) Demonstration of CO impacts of the proposed fuel formulations (see Attachment 3, Exhibit 2, Appendix G and Appendix K); (3) Demonstrations of NO_X/PM impacts of the proposed fuel regulations (see Attachment 3, Exhibit 2, Appendix M); and (4) the Urban Airshed Model (UAM) modeling demonstration from the draft Voluntary Early Ozone Plan (VEOP)(see Attachment 3, Exhibit 6, Appendix B).

[1] See 56 FR 56694 (November 6, 1991), CAA Sections 181(a)(1) and 188(c)(1), 62 FR 60001 (November 6, 1997) and CAA Section 181(a)(1), 61 FR 21372 (May 10, 1996) and CAA Section 188(c)(2).

[2] This section is currently codified in the ARS as section 41–2083(F).

[3] The State reformulated gasoline rules are codified in the ARS as section 41–2124. Section 41–2123 of HB 2307 also contains wintertime oxygenate requirements for fuels. The bill changed the effective dates of the oxygenate requirements from October 15 to November 15 through March 31 of each year.

The modeling used 1996 as the base year and evaluated the effects of existing and future control measures. Arizona's CBG requirements are built into the 1996 base year inventory and modeled out to the 1999, and 2010 projected attainment years.

To allow the Arizona CBG program to substitute for the federal RFG program, on September 15, 1997 the State also submitted a separate letter to Administrator Browner, requesting to opt out of the federal RFG program, effective June 1, 1998, contingent upon EPA approval of the Arizona SIP revision and the associated waiver request. In response, Dick Wilson, Acting Assistant Administrator for Air and Radiation, EPA, sent a letter to Governor Hull on October 3, 1997, which states that upon Region IX publication of a final approval of a SIP revision incorporating the CBG Interim Rule, the Office of Mobile Sources will notify the State and publish a notice in the **Federal Register** approving Arizona's opt-out from the federal RFG program.

Arizona submitted a further addendum to the SIP revision on October 21, 1997, which contained additional technical materials supporting the State's waiver request.

II. EPA Evaluation of SIP Submittal

A. General SIP Requirements

As discussed below, EPA has evaluated the SIP revision and has determined that it is consistent with the requirements of the CAA and EPA regulations. On November 13, 1997, EPA found that the September 12, 1997 SIP revision conformed to EPA's completeness criteria in 40 CFR part 51, Appendix V.

Information regarding enforcement and compliance assurance for the SIP revision can be found in the ARS (specifically in Article 6, Chapter 15, Department of Weights and Measures, of Title 41) and the Arizona Administrative Code (AAC). The Arizona Department of Weights and Measures (ADWM) implements the CBG rule and has the necessary authority under ARS 41–2124.C, ARS 41–2124.01.B, ARS 41–2065.A.4, .14, and .16, and ARS 41–2065.D to obtain samples (AAC R20–2–721), test (AAC R20–2–759), and complete surveys (AAC R20–2–760). Any person violating the CBG rule is subject to prosecution pursuant to ARS 41–2113.B.4, civil penalties pursuant to ARS 41–2115 and stop-use, stop-sale, hold and removal orders pursuant to ARS 41–2066.A.2 (AAC R20–2–762). The SIP submittal also contains a letter from the Arizona Attorney Generals office regarding enforceability of the Arizona CBG rule outside of the Arizona State boundaries and a letter from the ADWM regarding gasoline sampling analysis timeframes. EPA has concluded that these provisions confer on the State the requisite authority to enforce compliance with the CBG Interim Rule.

B. Section 211(c)(4)

1. Federal Preemption

The CBG Interim Rule establishes state gasoline standards. As discussed above, CAA section 211(c)(4)(A) preempts certain state fuel regulations by prohibiting a state from prescribing or attempting to enforce ''any control or prohibition respecting any characteristic or component of a fuel or fuel additive'' for the purposes of motor vehicle emission control, if the Administrator has prescribed under section 211(c)(1), ''a control or prohibition applicable to such characteristic or component of the fuel or fuel additive,'' unless the state prohibition is identical to the prohibition or control prescribed by the Administrator.

The CBG Interim Rule establishes three types of gasoline standards. For 1998, the requirements for CBG Types 2 and 3 gasoline apply. In addition, all Arizona CBG must meet specified fuel property limits for that year.[4] For 1999 and beyond, the requirements for CBG Types 1 and 2 gasoline would apply. In addition, all Arizona CBG would have to meet the fuel property limits specified for that time period.[5] These proposed types of gasoline include performance standards as well as requirements for specific fuel parameters. EPA's analysis of preemption addresses the following standards in the CBG Interim Rule: performance standards for NO_X and VOC (under gasoline Types 1 and 3); performance standards for NO_X and HC (under Type 2); and parameter specifications for oxygen, sulfur, olefins, aromatic HC, T50, and T90 (under gasoline Type 2).

To determine whether a state fuel requirement is preempted by a federal requirement, EPA compares the applicable federal fuel requirements in the area with the proposed state fuel requirements. For the purposes of this analysis, the federal fuel requirement in the Phoenix ozone nonattainment area is federal conventional gasoline. While Arizona has opted into the federal RFG program for the 1997 season, the State has requested to opt out of the program before the State CBG requirements would apply.[6] Once the State has opted out of the federal RFG program, the applicable federal requirements would be those for conventional gasoline. The federal requirements for conventional gasoline include a NO_X performance standard. CBG Types 1 and 3 also contain a NO_X performance standard, so the CBG NO_X performance standard is preempted. The CBG Interim Rule would allow refiners to meet the requirements for Type 2 gasoline in lieu of the requirements for CBG Type 1 or 3 gasoline. Whether the specifications for CBG Type 2 are preempted is less clear. The CBG Type 2 specifications include performance standards for NO_X and HC and requirements for the fuel parameters sulfur, olefins and aromatic HCs. The federal conventional gasoline standards do not include requirements for these specific parameters. However, refiners are required to use an emissions performance model that determines NO_X and HC performance based in part on these fuel parameters.

In this rulemaking, EPA does not need to determine whether these types of State fuel requirements are preempted under section 211(c)(4)(A) prior to acting on the proposed revision to the Arizona SIP. If the sulfur, olefins and aromatic HC requirements are not preempted, there is no bar to EPA approving them as a SIP revision. If they are preempted, EPA would be able to approve these requirements as necessary under section 211(c)(4)(C) if EPA could approve the NO_X performance standard as a SIP revision. Sulfur, olefins and aromatic HC requirements all reduce NO_X emissions. Under Type 1 or 3 CBG, refiners would obtain NO_X reductions through a NO_X performance standard, and under Type 2 CBG, refiners would obtain comparable NO_X reductions through sulfur, olefins and aromatic HC requirements. If EPA finds the NO_X reductions produced by the NO_X performance standard under CBG Types 1 and 3 to be necessary, then the comparable reductions produced by the alternative of CBG Type 2 gasoline would also be necessary. Thus, based on EPA's finding, discussed below, that NO_X reductions are necessary under section 211(c)(4)(C), EPA is proposing to approve the sulfur, olefins and aromatic HC requirements as well.

The CBG Interim Rule also requires refiners to meet a VOC performance standard (under CBG Types 1 and 3 gasoline); or a HC performance standard or oxygen, T50 and T90 requirements

[4] AAC R20–2–751.01.A.

[5] AAC R20–2–751.A.

[6] The opt-out is contingent on the CBG requirements becoming effective upon EPA's approval of the regulations in the SIP.

(under CBG Type 2 gasoline). Federal conventional gasoline requirements do not include a VOC performance standard or controls on these specific parameters. However, refiners are required to meet summertime volatility limits, and are required to use an emissions performance model that determines NO_X performance based in part on the same fuel parameters as those used in the CBG Interim Rule. In this rulemaking, EPA does not need to determine whether these types of state fuel requirements are preempted under section 211(c)(4)(A) if EPA finds that these fuel requirements are necessary for the Phoenix nonattainment area to meet the ozone NAAQS. Of course, if these requirements are not preempted, there is no bar to approving them as a SIP revision.

Arizona has already demonstrated that its 7.0 psi RVP requirement is necessary under section 211(c)(4)(C) to meet the ozone NAAQS in the Phoenix area.[7] Compliance with either the VOC performance standard or the HC performance standard or the oxygen, T50 and T90 requirements would produce some additional VOC reductions beyond those produced by the 7.0 psi RVP requirement. As with the NO_X performance standard and the alternative fuel parameter requirements discussed above, refiners would obtain comparable VOC reductions through either the VOC performance standard or the oxygen, T50 and T90 requirements. Thus, if EPA finds the VOC reductions produced by the NO_X performance standard under CBG Type 1 and 3 gasoline to be necessary, then the comparable emissions reductions produced by the alternative of CBG Type 2 gasoline would also be necessary. EPA is proposing to approve the VOC performance standard and the oxygen, T50 and T90 requirements because either they are not preempted under section 211(c)(4)(C) or to the extent that they are or may be preempted, EPA is proposing, as discussed below, that they are necessary and hence approvable under section 211(c)(4)(C).

2. Finding of Necessity

As discussed below, EPA is proposing to find that the CBG NO_X performance standards are necessary for the Phoenix PM_{10} nonattainment area to meet the PM_{10} NAAQS, and that the CBG VOC and HC performance standards, and the oxygen, T50 and T90 requirements are necessary for the Phoenix ozone nonattainment area to meet the ozone NAAQS.

To make this determination, EPA must consider whether there are other reasonable and practicable measures available that would produce sufficient emissions reductions to attain the ozone and PM_{10} standards without implementation of the CBG requirements. In considering other measures for the purpose of demonstrating necessity under section 211(c)(4)(C), EPA agrees that Arizona need not submit an evaluation of alternative fuels measures. As discussed above, the State conducted an extensive public process to evaluate emissions control options, including fuels options. Arizona not only considered other fuels options, including opt-in to federal RFG, it has actually implemented this measure for a limited time. However, Arizona did not address retention of RFG or other fuels measures in its section 211(c)(4)(C) submission, and EPA concurs with this approach. EPA interprets the reference to ''other measures'' that must be evaluated as generally not encompassing other state fuels measures, including state opt-in to federal RFG. The Agency believes that the Act does not call for a comparison between state fuels measures to determine which measures are unreasonable or impracticable, but rather section 211(c)(4) is intended to ensure that a state resorts to a fuel measure only if there are no available practicable and reasonable nonfuels measures. Thus, in demonstrating that measures other than requiring CBG gasoline are unreasonable or impracticable, a state need not address the reasonableness or practicability of other state fuel measures.

To determine whether the State gasoline VOC performance standards are necessary to meet the ozone NAAQS, EPA must consider whether there are other reasonable and practicable measures available to produce the needed emission reductions for ozone control. As mentioned previously, the State and local governments have adopted and implemented a broad range of ozone control measures. In addition, the ADEQ has developed a Voluntary Early Ozone Plan (VEOP) including air quality modeling and additional control measures.

EPA examined Urban Airshed Modeling (UAM) completed for the VEOP, which evaluated the effects of existing and future VOC control measures, to support the necessity finding for this rulemaking.[8] The fifteen control measures that were evaluated for 1999[9] are: (1) purge test in I/M (evaluated for 2010); (2) final I/M cutpoints; (3) I/M testing of constant 4-by-4 vehicles; (4) federal RFG (both Phase I and Phase II RFG at 7.2 psi RVP; (5) adoption of California standards for off-road mobile sources; (6) voluntary catalyst replacement program; (7) voluntary vehicle retirement program; (8) voluntary commercial lawn mower replacement; (9) new standards for the use of industrial cleaning solvents; (10) alternative fuels tax incentives; (11) Motor Vehicle Division registration enforcement and mandatory insurance; (12) pollution prevention; (13) temporary power at construction sites; (14) alternative-fuelled buses; and (15) traffic light synchronization. (See Appendix H, Exhibit 2, Attachment 3 of the SIP submittal.)

Results from the modeling demonstration showed that, using Arizona CBG gasoline (modeled as federal RFG or California RFP with an RVP of 7.0 psi) plus all other measures identified, the Maricopa area would still fail to attain the 0.12 ppm ozone NAAQS in 1999. The VEOP indicates that ozone control measures need to show a 13 percent reduction of ambient ozone to attain the standard in 1999. The percent reduction from Federal Phase II RFG and California Phase II RFG is 3.9 percent and 2.6 percent respectively. The total percent reduction available from the measures examined in the VEOP is less than 6 percent.

If the State's CBG VOC emissions performance standards were not implemented, the projected shortfall in emissions reductions would be larger. EPA recognizes that these estimates for reductions needed, reductions produced by various measures, and the scope of the measures available are all based on analysis that will be further refined and updated as the State's serious area plan is developed. Nevertheless, EPA is basing today's action on the information available to the Agency at this time, which does not indicate that there are other reasonable and practicable measures available to the State that would fill the projected emissions reduction shortfall. Hence, EPA proposes to find that the CBG VOC emissions performance standards are necessary for attainment of the ozone

[7] See 62 FR 31734 (June 11, 1997).

[8] The control measure analysis submitted for the VEOP should be considered a preliminary draft analysis. The Phoenix nonattainment area was originally classified as moderate but was reclassified to serious after the VEOP was completed. Arizona is currently developing a serious area plan. However, the plan has not been completed in time for inclusion in this SIP revision and therefore could not be examined to support the necessity finding.

[9] 1999 was chosen as the modeling year because it is the next ozone attainment date in the Clean Air Act after 1996. See CAA 181(a)(1).

NAAQS, and EPA proposes to approve them as a revision to the Arizona SIP for the Phoenix ozone nonattainment area.

The State, the Maricopa County air pollution control agency, and the local jurisdictions in Maricopa County have adopted and implemented a broad range of particulate control measures and are currently considering additional controls in the course of developing the serious area PM_{10} plan for the Maricopa County nonattainment area. The State's submission in support of the necessity demonstration includes both measures that are currently being implemented or for which commitments are in place, and various additional measures being considered for implementation in the serious area plan.

The air quality modeling submitted by ADEQ shows that implementation of all of the PM_{10} control measures identified by the State would still result in an emissions shortfall and the area would need an additional 2.4 percent reduction in the ambient concentrations of PM_{10} to demonstrate attainment of the PM_{10} NAAQS. The State's analysis projects that two additional measures, paving 100% of unpaved roads and controlling 100% of shoulders and access points, would produce sufficient emissions reductions to eliminate this shortfall. However, Arizona has characterized these measures as unreasonable for purposes of section 211(c)(4)(C) and hence inappropriate to consider as available control measures in the necessity demonstration.

EPA agrees that, for purposes of section 211(c)(4)(C), both paving 100% of unpaved roads and controlling 100% of shoulders and access points would be unreasonable measures to implement in the Phoenix area in comparison to the CBG NO_X performance standard. In determining whether a control measure is unreasonable or impracticable for purposes of section 211(c)(4)(C), reasonableness and practicability should be determined taking into account a comparison with the fuel measure that the state is petitioning to adopt. EPA must assess whether it would be reasonable and practicable to require the other control measure in light of the potential availability of the preempted state fuel control. Finding another measure unreasonable or impracticable under this criterion does not necessarily imply that the measure would be unreasonable or impracticable for other areas, for the same area under different circumstances, or for the same area under an analysis outside of the section 211(c)(4)(C) context.[10] For further discussion of this criterion see ''Guidance on Use of Opt-In to RFG and Low RVP Requirements in Ozone SIPs,'' U.S. EPA, Office of Mobile Sources, August 1997.

Controlling PM_{10} through paving 100% of unpaved roads and controlling 100% of shoulders and access points raises concerns regarding costs, feasibility, timing, administrative burdens, and burdens on individual citizens. ADEQ estimates the capital cost of paving 100% of unpaved roads to be $59.4 million, which is $54 million more than ADEQ's identified alternative of chemically controlling 100% of unpaved roads and would only reduce emissions by an additional 1.9%. To control 100% of shoulders and access points through installing curbs on 100% of paved road shoulders and paving 100% of access points to paved roads, ADEQ estimates a capital cost of $733.3 million, which is $366.65 million more than the estimated cost of its identified alternative measure which would be to control 50% of shoulders and access points. In addition, ADEQ has serious concerns about the feasibility of successfully paving all unpaved roads in the area with greater than 120 Average Daily Travel (ADT) miles and controlling all shoulders and access points before the attainment date of December 31, 2001. Besides the significant capital expenditure associated with these measures, implementation of these measures would impose a substantial administrative burden on local and state agencies and would require significant coordination of local and state agencies. In addition, motorists throughout the area would experience the inconveniences and delays associated with extensive road construction projects.

In comparison to the measures discussed above, the infrastructure for implementation of the fuel measure is already in place. This significantly reduces the burden on the implementing refineries, and would allow implementation of the measure to begin as early as the summer of 1998. Most of the compliance burden associated with the measures will be felt by a limited number of fuel suppliers. In addition, most of the compliance and implementation burdens associated with CBG have already been shown to be necessary for compliance with the ozone NAAQS. Therefore any additional burden for compliance with NO_X performance standards will be minimal. Finally, implementation of the measure would require only limited new coordination efforts between ADEQ and ADWM. Thus, in comparison to the CBG NO_X performance standard, for the purposes of section 211(c)(4)(C), it would be unreasonable to require paving 100% of unpaved roads and controlling 100% of shoulders and access points in the Phoenix area in the timeframe considered here.[11]

Because the State is currently working on the underlying analysis for the serious area PM_{10} plan for the Maricopa County nonattainment area, due December 10, 1997, EPA notes that the information relied on here is preliminary. The State may further refine its estimates of the emissions reductions needed, the emissions reductions produced by various control measures, and the scope of control measures available. Nevertheless, the information submitted by the State indicates that even with the implementation of all reasonable and practicable control measures known to be available at this time, including CBG,[12] additional emissions reductions will be needed for timely attainment of the PM_{10} standard. Therefore, EPA proposes to find that the NO_X performance standard in the CBG requirements is necessary for attainment of the PM_{10} standard, and EPA proposes to approve this requirement as a revision to the Arizona SIP for the Phoenix PM_{10} nonattainment area.[13]

C. Enforceability

The ADWM has developed requirements for every entity in the gasoline distribution system to ensure that Maricopa County will receive gasoline that meets the state CBG standards.[14] The requirements, which include registration of gasoline suppliers, testing and sampling, compliance surveys, and record keeping and reporting, apply to (1) service stations, (2) fleet owners, (3) third party terminals, (4) pipelines and fuel transporters, (4) oxygenate blenders, and

[10] For example, given the different criterion for EPA's section 211(c)(4)(C) evaluation, today's proposed finding does not in any way prejudge the question of whether these same measures might be reasonable in the context of the requirements in section 189 (a) and (b) for reasonably available control (RACM) and best available control measures (BACM) for PM_{10} control.

[11] See footnote 10 and related discussion above for explanation of limited applicability of this proposed finding.

[12] Arizona CBG was included in the modeling analysis as Federal RFG, Phase II at 100% market share.

[13] In its September 12, 1997 letter, ADEQ submitted the CBG Interim Rule as a revision to the Arizona ozone SIP. In order for EPA to take final action approving the CBG rule into the Arizona PM_{10} SIP, the State will need to formally submit the rule as a revision to that SIP. ADEQ has informed EPA that it intends to do so in the near future.

[14] AAC R20–2–751. Area A Arizona CBG Requirements—1999 and AAC R20–2–751.01 Area A Arizona CBG Requirements—1998.

(5) producers and importers of CBG. The requirements imposed by the CBG rule apply to activity occurring both within and outside of the State of Arizona. The State Attorney General's office has provided an analysis concluding that the State has full authority to enforce the rules and the associated requirements beyond the State borders.

Before any CBG suppliers may produce or import CBG, it must register with the ADWM.[15] These suppliers include any refiner, importer, oxygenate blender, pipeline or third party terminal who will produce, supply or have custody of Arizona CBG after June 1, 1998. These registered suppliers must certify that each batch of gas meets the CBG standards as described in the Interim Rule. They must retain records of the sampling for five years; supply these records to ADWM, if requested, within 20 days; and notify ADWM of transport methods other than pipelines. They must also maintain a quality assurance/quality control (QA/QC) program to verify the accuracy and effectiveness of fuel testing or use an independent laboratory to complete testing (unless computer-controlled in-line blending equipment is in operation which is supplying audit reports to EPA and ADWM under 40 CFR 80.65(f)(4)).[16]

Registered oxygenate blenders must follow the blending requirements submitted by the registered supplier and comply with additional blending requirements. For all terminal blending facilities, registered blenders must determine the oxygen content and volume of final blends before such blends leave the oxygen blending facility. Oxygenate blenders completing operations in gasoline delivery trucks must implement a quality assurance sampling and testing program. In-line blending operators using computer controlled blending must sample the fuel after the addition of oxygenate and prior to combining the batch with other gasoline, and they must notify the pipeline and ADWM of any batch which does not contain the specified type and amount of oxygenate. Oxygenate blenders must keep records of sampling and shipments for five years and make those records available within 20 days of a request.[17]

Registered pipelines and third party terminals may not accept Arizona CBG from a supplier that is not registered with ADWM and that cannot submit written verification that the gasoline meets CBG standards. These gasoline transporters must also complete sampling of all CBG batches, report non-compliance of any batches with CBG standards within 24-hours of sampling to ADWM, and develop a QA/QC program to demonstrate the accuracy and effectiveness of the laboratory testing. Pipelines must also submit a monthly report to ADWM summarizing the results of laboratory testing of all Arizona CBG that has entered a pipeline (including the present location of the fuel sample).[18]

Fleet owners and service stations do not have to sample gasoline. However, they must retain on-site records for their most recent four deliveries, which verify the quantity and identify of each grade of motor fuel delivered. Service stations and fleet owners may maintain these records for the remainder of the previous 12 months off-site if the records are made available within two working days from the time of a request. These records shall contain: the name and address of the transferor and transferee; the volume, minimum octane rating, VOC and NO_X reduction percentage standards, and origination point of the CBG; the date of transfer, proper identification of the gasoline as Arizona CBG or AZRBOB;[19] and the type and quantity of oxygenate contained in the Arizona CBG or identification of the product as AZRBOB, a statement that it does not comply with CBG standards without the addition of oxygenate, and the oxygenate types and amount needed to meet the properties claimed by the registered supplier.[20]

To maintain compliance with Arizona CBG standards, in addition to the ongoing registration, testing,[21] quality assurance and recordkeeping activities described above, ADWM will conduct compliance surveys throughout the year.[22] Each producer and importer of CBG must contribute to the costs of two surveys of CBG quality in Phoenix in the summer of 1998, followed by two surveys during the summer and winter seasons[23] for each following year, based on gasoline samples collected at retail outlets. Each compliance survey will be conducted by an independent surveyor who will develop a survey plan with committed funding for the season, to be submitted to ADWM by April 1 of each year. These surveys will cover compliance with VOC and NO_X reduction levels and average levels of RVP, T50, T90, aromatic hydrocarbons, olefins, sulfur and oxygen. The results of each survey will be submitted to ADWM within thirty days following completion of the survey. If the survey or other testing indicates that the gasoline does not meet CBG VOC or NO_X reduction averaging[24] percentage standards, the registered supplier must pay penalties and comply with more stringent applicable flat per gallon standards during a probationary period. For example, on each occasion that a sample fails a VOC emission reductions survey on or after May 1, 1999, the VOC emissions performance reduction and the minimum per gallon percentage reduction shall be increased by an absolute 1.0%, not to exceed the VOC percent emission reduction per gallon standard.[25]

D. Proposed Action

EPA has evaluated the submitted SIP revision and has determined that it is consistent with the CAA and EPA regulations. EPA has also found that the various CBG requirements are either not preempted by federal fuel requirements or are necessary for the Phoenix nonattainment area to attain the ozone and PM_{10} NAAQS, pursuant to CAA. Therefore, EPA is proposing to approve the Arizona CBG Interim Rule into the Arizona SIP for the Phoenix ozone and PM_{10} nonattainment areas under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and part D.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic,

[15] AAC R20–2–750. Registration Pertaining to Arizona CBG or AZRBOB.

[16] AAC R20–2–752. General Requirements for Registered Suppliers.

[17] AAC R20–2–755. Additional Requirements Pertaining to AZRBOB and Downstrean Oxygenate Blending.

[18] AAC R20–2–753. General Requirements for Pipelines and Third Party Terminals.

[19] AZBOB, as defined in the CBG Interim Rule (AAC R20–2–701.3) is ''a petroleum-derived liquid which is intended to be or is represented as a product that will constitute Arizona CBG upon the addition of a specified type and percentage (or range of percentages) of oxygenate to the product after the product has been supplied from the production or import facility at which it was produced or imported.''

[20] AAC R20–2–709. Records Retention Requirements for Service Stations and Fleet Owners.

[21] AAC R20–2–759. Testing Methodologies.

[22] AAC R20–2–760. Compliance Surveys.

[23] The summer season will last from May 1 through September 15 and the winter season will last from November 1 through March 15 of each year.

[24] Under the CBG rule, if they submit to compliance surveys, registered suppliers can initially elect to comply with an average VOC reduction standards of 29 percent with a minium per gallon reduction of 25 percent instead of a flat per gallon percent reduction standard of 27.5 percent. See AAC R20–2–751.01.

[25] AAC R20–2–751.01(F) Area A Arizona CGB Requirements—1999 and Later, Consequences of failure to comply with averages.

and environmental factors and in relation to relevant statutory and regulatory requirements.

V. Administrative Requirements

A. Executive Order 12866

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility

The Regulatory Flexibility Act (RFA), 5 U.S.C. 600 *et seq.*, generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This proposed rule would not have a significant impact on a substantial number of small entities because this federal action authorizes and approves requirements previously adopted by the State, and imposes no new requirements. Therefore, because this proposed action does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in expenditures to State, local, and tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that this proposed approval action does not include a Federal mandate that may result in expenditures of $100 million or more to either State, local, and tribal governments in the aggregate, or to the private sector in any one year. This proposed Federal action authorizes and approves requirements previously adopted by the State, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, will result from this proposed action.

Dated: November 14, 1997.

Felicia Marcus,

Regional Administrator.

[FR Doc. 97–30517 Filed 11–19–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region 2 Docket No. NJ29–1–175; FRL–5925–5]

Approval and Promulgation of Implementation Plans; State of New Jersey; Clean Fuel Fleet Opt Out

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: In this action, the Environmental Protection Agency (EPA) is proposing to approve the State Implementation Plan revision submitted by the State of New Jersey for the purpose of meeting the requirement to submit the Clean Fuel Fleet program (CFFP) or a substitute program that meets the requirements of the Clean Air Act (Act). EPA is proposing to approve the State's plan for implementing a substitute program to opt out of the CFFP.

DATES: Comments must be received on or before December 22, 1997.

ADDRESSES: All comments should be addressed to Ronald Borsellino, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, New York, New York 10007–1866.

Copies of the State submittals are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region 2 Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007–1866

New Jersey Department of Environmental Protection, Bureau of Air Quality Planning, 401 East State Street, CN027, Trenton, New Jersey 08625

FOR FURTHER INFORMATION CONTACT: Michael P. Moltzen, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–4249.

SUPPLEMENTARY INFORMATION:

I. Background

Section 182(c)(4)(A) of the Clean Air Act requires states containing areas designated as severe ozone nonattainment areas, including New Jersey, to submit for EPA approval a state implementation plan (SIP) revision that includes measures to implement the Clean Fuel Fleet program (CFFP). Under this program, a certain specified percentage of vehicles purchased by fleet operators for covered fleets must meet emission standards that are more stringent than those that apply to conventional vehicles. Covered fleets are defined as fleets of 10 or more vehicles that are centrally fueled or capable of being centrally fueled. A CFFP meeting federal requirements would be a state-enforced program which requires covered fleets to assure that an annually increasing percentage of new vehicle purchases are certified clean vehicles and that those vehicles operate on clean fuel. In New Jersey, the program would apply in the State's portion of the New York-Northern New Jersey-Long Island ozone nonattainment area and in New Jersey's portion of the Philadelphia-Wilmington-Trenton ozone nonattainment area.

The federal CFFP is divided into two components. The first component is a light duty (LD) CFFP which applies to covered fleets of passenger cars and trucks of gross vehicle weight rating (GVWR) of 6,000 pounds and less, and trucks between 6,000 and 8,500 pounds GVWR. Covered fleets which fall under the LD CFFP are required to assure that 30 percent of new purchases are clean vehicles in the first year of the program, 50 percent in the second year and 70 percent in the third and subsequent years.

The second component is a heavy duty (HD) CFFP which applies to covered fleets of trucks over 8,500 pounds GVWR and below 26,000

pounds GVWR. The HD CFFP requires that 50 percent of covered fleets' new purchases be clean fueled vehicles in the first and subsequent years.

Under the federal CFFP, the vehicle exhaust emission standards for LD vehicles are equivalent to those established by the California Air Resources Board (CARB) as LD low emission vehicles (LEVs), for use in the California LEV program (discussed in more detail in section II. of this notice). In addition to LEVs, CARB certification exists for transitional LEVs (TLEVs), ultra LEVs (ULEVs) and zero emission vehicles (ZEVs). In addition, under the federal CFFP, clean vehicle emission standards are defined for inherently low emitting vehicles (ILEVs) and for medium and heavy duty vehicles (both of which are covered within the HD CFFP weight category). For further information regarding emission standards associated with all of the clean fuel vehicles which are applicable under the LEV program and the federal CFFP, the reader is referred to the CFFP final rule, published on March 1, 1993 at 58 FR 11888.

Section 182(c)(4)(B) of the Act allows states to ''opt out'' of the CFFP by submitting for EPA approval a SIP revision consisting of a program or programs that will result in at least equivalent long term reductions in ozone-producing and toxic air emissions as achieved by the CFFP. The Clean Air Act directs EPA to approve a substitute program if it achieves long term reductions in emissions of ozone-producing and toxic air pollutants equivalent to those that would have been achieved by the CFFP or the portion of the CFFP for which the measure is to be substituted.

New Jersey, in its 1992 SIP revision chose to preserve its right to opt out of the CFFP but did not indicate a specific substitute measure or measures which was to be used for that purpose. Prior to EPA action on this commitment, the Court of Appeals for the District of Columbia ruled that EPA's conditional approval policy with respect to state commitments was contrary to law. [*NRDC* v. *EPA*, 22 F.3d. 1125 (D.C. Cir. 1994)]. The court held that a bare commitment from a state was not sufficient to warrant conditional approval from EPA under section 110(k)(4) of the Act. Therefore, following this decision, EPA could not approve New Jersey's November 1992 commitment to opt out of the CFFP.

However, in fashioning a remedy for EPA's improper use of its conditional approval authority, the NRDC Appellate court did not want to penalize states for their reliance on EPA's actions. EPA also does not believe that New Jersey should lose its opportunity to opt out of the CFFP with a substitute program that meets the requirements of section 182(c)(4)(B) because of EPA's inability to act on New Jersey's commitment, especially since New Jersey has since submitted such a substitute program for EPA approval.

Therefore, EPA is considering all relevant submissions made thus far by the State that are intended to substitute for the CFFP.

The Region received from New Jersey a proposed SIP revision dated May 15, 1994. The submittal, consisting of New Jersey's then proposed LEV program, was intended to fulfill the State's CFFP obligations. However, because the Clean Air Act requires SIP revisions to consist of adopted measures, and because the opt out measure was only in the proposal stage, EPA transmitted a finding of failure to submit the required SIP revision in a letter to the State on October 3, 1994. New Jersey then had 18 months from the date of the letter to submit the required SIP before sanctions were to take effect.

On February 15, 1996, in order to cure the finding of failure to submit, New Jersey submitted its New Jersey Clean Fleets (NJCF) program as a substitute for the federal CFFP. As described earlier, the federal CFFP is a state-enforced program which requires that operators of covered vehicle fleets assure that a percentage of their new vehicle purchases are certified clean vehicles and that those vehicles operate on clean fuel. By contrast, the NJCF program is an essentially voluntary mix of incentive-based programs which are intended to spur public and private fleets within New Jersey to purchase clean, alternatively fueled vehicles (AFVs) (discussed in more detail in section III. C. of this notice).

On March 29, 1996, New Jersey supplemented the CFFP SIP revision with a letter clarifying that the NJCF program substitution includes, to the extent necessary to meet SIP obligations, New Jersey's LEV program which had been adopted by that time. Because the emissions reductions relied upon in the NJCF program will largely result from voluntary measures, the State's LEV program essentially serves the role of a ''backstop'' to the NJCF program. This means that in the event the NJCF program fails to achieve the emissions reductions claimed by the State, emission reductions achieved with the separate LEV program will be used by the State to account for those reductions that would have originally been realized through the federal CFFP. In that event EPA would then recognize the State's LEV program as the effective opt out measure.

Unlike the federal CFFP, the LEV program imposes requirements on auto manufacturers and their yearly vehicle sales. New Jersey adopted a LEV regulation states that New Jersey's primary intention is to participate in the National LEV (NLEV) program (discussed in more detail in the section II. C.4. of this notice). However, EPA cannot require NLEV—it must be mutually agreed upon by the participating states and the auto manufacturers—and if NLEV fails to become effective (due to lack of such an agreement), New Jersey's regulation states that it will operate a State LEV or ''California'' LEV program (discussed in more detail in section II. of this notice), an option afforded states in the Clean Air Act (see Clean Air Act section 177). The NLEV and State LEV programs are similar in that where applicable, auto manufacturers must meet an average vehicle emission standard, based on the certified emission standards of all annual vehicle sales. The annual average vehicle emission standard (referred to as the non-methane organic gas (NMOG) average) increases in stringency on an annual basis. Quantitatively, NLEV or State LEV, whichever is ultimately implemented in New Jersey, will achieve long term vehicle emission reductions which are far greater than what the federal CFFP could have achieved.

Based on these provisions in the SIP revisions submitted by New Jersey on February 15, 1996 and March 29, 1996, EPA sent a letter to New Jersey on April 4, 1996 notifying the State that the finding of failure to submit had been withdrawn. New Jersey amended its NJCF SIP revision with a March 6, 1997 submittal, which included comments on the proposed SIP revision received by the State, including those received at a State-held public hearing on October 21, 1996.

The Clean Air Act requires states to observe certain procedural requirements in developing implementation plan revisions for submission to EPA. Sections 110(a)(2) and 172(c)(7) of the Act require states to provide reasonable notice and public hearing before adoption by the state and submission to EPA for approval. Section 110(1) of the Act also requires states to provide reasonable notice and hold a public hearing before adopting SIP revisions.

EPA must also determine whether a state's submittal is complete before taking further action on the submittal. See section 110(k)(1). EPA's completeness criteria for SIP submittals are set out in 40 CFR Part 51, Appendix

V (1993). New Jersey's SIP revision which EPA is proposing to approve in this notice meets all of the procedural requirements and completeness criteria.

II. State Submittal

New Jersey submitted SIP revisions on February 15, 1996, March 29, 1996 and March 6, 1997 which substituted the State's NJCF program, backstopped by New Jersey's adopted and enforceable LEV program, for the federal CFFP. The adopted LEV regulation requires the implementation of a program identical to the California LEV program or, if certain triggering events occur, participation in the National LEV program (discussed in more detail in section III. C.4. of this section). The LEV program operated in California requires that each model year of vehicles produced for sale, beginning with model year 1994, be certified to meet a specific NMOG standard when their total emissions are averaged as a fleet. Manufacturers must ensure that each model year of vehicles produced for sale, meet a yearly NMOG fleet average. The California LEV fleet-average NMOG standard was 0.25 grams per mile for model year 1994. The NMOG average becomes increasingly more stringent annually, and for model year 2003 and later the standard is 0.063 grams per mile.

New Jersey held a public hearing on October 21, 1996 to entertain public comment on its federal CFFP substitute SIP revision; this hearing included the State's proposal to opt out of the CFFP with its NJCF program and LEV backstop as a substitute program.

III. Analysis of State Submission

A. Opt Out Criteria and Requirements

Section 182(c)(4) of the Clean Air Act, which allows states required to implement a CFFP to opt out of the program by submitting a SIP revision consisting of a substitute program, requires that the substitute program result in long term emission reductions equal to or greater than does the CFFP. Also, EPA can only approve such substitute programs that consist exclusively of provisions other than those required under the Clean Air Act for the area. New Jersey's backstopped NJCF program satisfies both of these requirements.

B. Equivalency of Substitute

The Clean Air Act requires that any substitute for the federal CFFP must provide equivalent long term emission reductions. In its SIP revision, the State estimated the emission reductions which would be attributable to operation of the federal CFFP in New Jersey. It is this amount of long term reduction, discussed below, which the State's substitute must achieve.

Light Duty Vehicle Analysis

New Jersey first analyzed the potential for emissions reductions to result from long term compliance with the LD vehicle portion of the federal CFFP in New Jersey. The LD vehicle purchase requirements of the federal CFFP are intended to ensure a gradual turnover of conventional LD fleet vehicles to clean LD vehicles in covered fleets. In the long term, a substantial portion of LD vehicles in covered fleets, where the program is operated, would meet the LEV (or cleaner) standard, where otherwise they would not have met those more stringent standards (*i.e.*, if the State was not also operating a LEV program as described above). In its SIP revision however, New Jersey pointed out that the LD vehicle portion of the federal CFFP, in the long term, would essentially duplicate the Statewide, more comprehensive New Jersey LEV program which has already been adopted [Adopted on November 22, 1995 at 27 N.J.R. 5016(a) (December 18, 1995), codified at N.J.A.C. 7:27–26].

In the SIP revision, New Jersey explained that its LEV program is more comprehensive than the LD portion of the federal CFFP, because it will require virtually all LD vehicles sold in New Jersey (including fleet and non-fleet vehicles) to meet, by model year 2000, the LEV standard when their total emissions are averaged. By contrast, the federal LD CFFP will only require 70 percent of new vehicle purchases in covered fleets to meet the LEV standard in the long term, a requirement which would be met through the State's LEV requirements, imposed on the vehicle manufacturers.

New Jersey also noted that its LEV program begins one year later (model year 1999) than the federal CFFP (model year 1998). The State offered the justification that in the long term however, the LEV program requirements would make up for any shortfall in LD vehicle emission reductions that might be caused by the difference in start dates. However, subsequent to the date that New Jersey made its opt out submission to EPA, EPA has determined that a one year delay of implementation of the CFFP is necessary and appropriate. The delay is needed due to a stated lack of availability of the requisite types and numbers of clean fueled vehicles in the majority of the areas which are required to implement and comply with the regulatory requirements of a CFFP. This guidance and policy decision, which was based on input from all of the program stakeholders, was transmitted in a May 22, 1997 memo from EPA Office of Mobile Sources Director Margo Oge to EPA's Regional Air Directors. EPA anticipates publishing a rulemaking in the **Federal Register** shortly, finalizing the delay. The fact of the delay further lends equivalency to the NJCF program as a CFFP opt out, since both programs will now start at the same time.

With further examination of the relative effects of these programs, New Jersey also noted that there will still exist certain aspects of the federal LD CFFP that could result in greater emission reductions than the NJCF program on an individual LD vehicle basis. As an example, the State discussed the requirement that LEVs operate on the fuels for which they were certified to operate on, and that the federal CFFP requires that covered fleets must ensure that a certain percentage of their new vehicle purchases (both light and heavy duty) are certified to meet LEV (or cleaner) standards. By contrast, the NJCF program is voluntary (with the exception of the Energy Policy Act (EPAct), discussed in further detail in section C.). The State again justified the equivalency claim of its opt out measure by explaining the reasons why these differences are not significant discrepancies. With respect to the loss of emission reduction benefits that would occur from gasoline-powered LEVs operating on federal reformulated gasoline (RFG) rather than the fuel that they were certified to operate on (*e.g.*, California RFG), New Jersey explained that such a loss would be relatively small in the long term. The State claims that this is true because the reductions from the federal CFFP would occur only on a per vehicle basis, and because of its anticipation that a substantial number of LEVs will be operating on alternative fuels, in the later years of the State LEV program, that are cleaner than California RFG. EPA agrees with this line of reasoning, as well as with New Jersey's assertion that the overall additional benefit of the federal CFFP's fuel requirement for LEVs would be relatively small and insignificant in the long term for those reasons.

EPA agrees with New Jersey that implementation of the federal LD CFFP, in addition to either the NLEV or the State LEV program (the State has made certain through its regulations that one or the other will be implemented), for any small incremental benefits in light of the additional administrative requirements of the federal CFFP, would be burdensome and impractical. Lastly, EPA has determined, for the reasons

stated above, that the State does not need to account explicitly for the long term emission reductions which would have been associated with a LD CFFP since those reductions are negated by operation of a LEV program.

Heavy Duty Vehicle Analysis

The heavy duty vehicle portion of the federal CFFP requires that on an annual basis, 50 percent of heavy duty fleet vehicles purchased each year must meet clean fuel vehicle emission standards. Through appropriate modeling, New Jersey has determined that the estimated emission reduction benefit that would result from applying the federal CFFP's heavy duty vehicle requirements in New Jersey would be approximately 4.5 tons per day (tpd) of VOC and NO_X combined in 2010 (modeling techniques and assumptions used to arrive at this figure are described below). New Jersey assumes in its SIP, and EPA agrees with the assumption, that modeling emission reductions out to the year 2010 is adequate for the purpose of determining the long term reductions which could be expected of the heavy duty CFFP in New Jersey. The NJCF program must achieve that amount of emission reductions within the same time frame in order to be an acceptable substitute for the federal CFFP. If it does not, as will be verified through the program emission reduction tracking system that the State committed to implement (described in more detail below), the State has also committed to use emission reduction credit generated from either the NLEV program or the State LEV program to make up any emission reduction shortfall which may result.

Modeled Reductions from the CFFP

In order to determine the level of long term emissions reductions which needs to be provided by its opt out measures, the State employed the latest version of the mobile source emission model approved by EPA, MOBILE5a. Emission factors generated by the MOBILE model were used in conjunction with proscribed CFFP calculation guidelines in EPA's June 1994 CFFP Regulatory Impact Analysis (RIA). New Jersey determined through this modeling that the long term reductions associated with the federal CFFP would equal 4.5 tons per day of NO_X and VOC combined.

C. NJCF Program Details and Goals

NJDEP has estimated that, in order to meet the Clean Air Act requirement of an approvable CFFP substitute, the NJCF program must provide emission reductions equivalent to those from approximately 50,750 medium heavy duty certified clean fueled vehicles by 2010. NJDEP estimates that about 176 of these vehicles will come from the Clean Cities program, and the remainder from the efforts of the Incentive Development Workgroup (both of which are described below).

NJDEP has determined that in order to contribute towards the emission reductions needed for a substitute program, a medium or heavy duty vehicle must be certified by CARB to meet LEV (or cleaner) standards. For this reason New Jersey's SIP revision does not rely on emission reductions from alternative fuel vehicle (AFV) conversions to meet the target of 4.5 tons per day of NO_X and VOC combined by 2010. Furthermore, AFV conversions will comprise a relatively small percentage of total clean AFVs in use in New Jersey in the long term. EPA agrees with this conservative approach in today's proposed approval.

The NJCF program consists of the following four components: (1) Incentive Development program, (2) the Department of Energy's (DOE's) EPAct fleet requirements, (3) DOE's Clean Cities program, and 4) the Advanced Technology Vehicle (ATV) component of EPA's finalized NLEV program.

1. Incentive Development Program

The incentive development program was developed by a public/private workgroup which includes representatives of local and national fleet operators, municipalities, alternative and clean fuel providers, and government officials. The Workgroup's efforts are intended to spur use of clean alternative fuel vehicles. Major areas of focus for the Workgroup, as it implements its Action Plan, include development of a New Jersey alternative fuel mechanic training program and promotion of a State policy supporting the use of alternative fuels and AFVs.

2. EPAct Purchase Mandates

The second component of the NJCF program is the alternative fuel vehicle purchase requirements under the federal EPAct, 42 *U.S.C.* § 13201 *et seq.* Under EPAct, all state, federal, and fuel-provider fleets must ensure that a percentage of their new LD vehicle purchases operate on alternative fuels. In the long term, 75% of new state and federal purchases and 90% of fuel-provider purchases must be AFVs. To date, New Jersey reports that 61 State vehicles have been converted to run on clean alternative fuels as a result of EPAct compliance, and alternative fuel vehicles are available for purchase by public agencies through the State purchase contract.

3. New Jersey Clean Cities Program

Clean Cities is a voluntary federal program designed to accelerate and expand the use of clean AFVs and related refueling infrastructure in communities throughout the country. In 1995 the State's Division of Energy initiated Clean Cities programs in the metropolitan areas of Elizabeth, Jersey City, Newark and Trenton; New Jersey plans to expand these programs in other areas of the State as well. New Jersey expects the program to have a significant long term emission reduction benefit.

4. Advanced Technology Vehicle Program

The fourth component of the NJCF program is the Advanced Technology Vehicle (ATV) component of the NLEV program. NLEV is an alternative to the Ozone Transport Commission (OTC) LEV program, which the OTC petitioned EPA to require. EPA had made a determination requiring LEV to be adopted throughout the northeast ozone transport region (OTR); however a Federal Circuit Court has since remanded that requirement. *Virginia* v. *EPA*, No. 95–1163 (D.C. Cir. March 11, 1997). NLEV is a voluntary program wherein auto manufacturers would manufacture low emission vehicles nationwide instead of just for the OTR and California.

EPA proposed the NLEV program in October 1995, and issued the final NLEV rule in the June 6, 1997 **Federal Register** (62 FR 31192). EPA also issued an NLEV supplementary Notice of Proposed Rulemaking (SNPRM) on August 22, 1997. EPA intends to finalize the SNPRM by mid- to late-autumn, 1997. Auto manufacturer and OTC state opt-ins shortly thereafter will ensure program startup in time for model year 1999 LEVs in the OTR.

In EPA's June 6, 1997 NLEV final rulemaking, an ATV was defined as any vehicle certified by CARB or EPA that is either: (1) A dual-fuel, flexible-fuel, or dedicated alternatively fueled vehicle certified as a transitional low emission vehicle (TLEV), LEV, or ultra low emission vehicle (ULEV) when operated on the alternative fuel; (2) certified as a ULEV or Inherently Low Emission Vehicle (ILEV); or (3) a dedicated or hybrid electric vehicle. As discussed in that rulemaking, EPA acknowledges the suggestion that advancing motor vehicle pollution control technology is an important benefit of NLEV. Furthermore, it has been suggested by several parties, including New Jersey, that establishment of an ATV component should be a criterion for

determining whether NLEV is an acceptable LEV-equivalent program. Although EPA agrees that advancing technology is an important goal, and EPA believes that the NLEV program could be a part of an agreement that would provide important opportunities to promote ATVs, the regulatory portion of the NLEV program does not address ATVs, EPA does not believe that advancing technology is or should be a legally-required criterion for approval of a LEV-equivalent program, and given the court decision invalidating the OTC LEV SIP call, there is no longer any legal requirement for NLEV to be a LEV-equivalent program. Nevertheless, EPA recognizes that including some advanced technology component is important and could provide additional environmental benefits beyond emissions reduction equivalency. Furthermore, EPA agrees with New Jersey's intention to use the ATV component as part of its substitute (backstopped by the enforceable State LEV program) for the federal CFFP. The ATV program involves a cooperative effort among the states in the OTR, EPA, DOE, fuel providers, aftermarket converters, fleet operators, and the full range of motor vehicle manufacturers to develop ways to increase use of ATVs. The NJDEP expects to begin implementing the ATV program, in cooperation with other states, the auto manufacturers, and fuel providers, as soon as the NLEV program with an ATV component becomes effective.

In order to facilitate implementation of the NJCF program, New Jersey has stated in its latest SIP revision that it is relying on EPA to support the ATV initiative by approving emission reduction SIP credits, where appropriate, upon the introduction of ATVs into the fleet. EPA is prepared to assist the State in this manner (*i.e.* by allowing long term emission reductions generated by the ATV component of NLEV to be used in part as a substitute SIP measure for the CFFP), provided emissions reductions from the ATV provision, along with those generated from the other NJCF program components, can be documented by the State. It is for this purpose that New Jersey has incorporated a planned system to track NJCF program emissions reductions. This system, described below, will serve to identify the need, if any should exist in the future, to utilize the credit from the State's adopted LEV program (*i.e.*, the backstop) should the planned reductions not occur as intended with the voluntary NJCF program.

NJCF Program Backstop

New Jersey, in exercising its option under section 177 of the Clean Air Act, has adopted a LEV program which affects all new LD vehicles sold State-wide, specifically passenger cars and LD trucks under 6,000 lbs. gross vehicle weight rating (GVWR) for vehicle model years 1999 and later. The LEV program sets forth five different sets of emission standards, and vehicle manufacturers may market any combination of vehicles provided that the annual average emissions of each manufacturer's fleet complies with a fleet average limit that becomes more stringent each year.

New Jersey's LEV program will assure reductions of ozone-forming and air toxics emissions that are at least equivalent to those that would be realized through the LD portion of a CFFP; in the event that the NJCF failed to reduce long term emissions to the level which would have been achieved by the CFFP, LEV could make up the resultant shortfall.

Vehicle Tracking System

As part of its most recent NJCF SIP revision, New Jersey has committed to implement an automated tracking system to track clean fueled vehicle purchases and conversions associated with the NJCF program (detailed above) throughout the State beginning in 1998. The State will periodically track the variety of clean NJCF vehicles purchased in New Jersey, but most notably CARB certified LEVs (and vehicles certified to more stringent standards, such as ULEVs). The information gathered from the automated tracking system would provide an accurate indication of the number of vehicles purchased in New Jersey that are certified to meet the applicable LEV, etc. standards. In this manner the State can accumulate a database with which it can calculate emission reduction benefits associated with certified clean vehicle purchases resulting from the NJCF program, and determine if necessary the need to employ the LEV backstop discussed above.

IV. Summary of Action

In this proposed rule, EPA is proposing to approve New Jersey's SIP revision submitted to fulfill the Clean Fuel Fleet requirements of the Clean Air Act. EPA believes New Jersey's Clean Fleet program, backstopped by the adopted New Jersey LEV program implementing the low emission vehicle program are an adequate substitute for the federal Clean Fuel Fleet program under section 182(c)(4).

Nothing in this rule should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to any SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Administrative Requirements

Executive Order 12866

The Office of Management and Budget has exempted this action from review under Executive Order 12866.

Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action proposed does not include a federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et. seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements, but

simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the Clean Air Act, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v *US EPA*, 427 US 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen dioxide, Ozone, Volatile organic compounds.

Authority: 42 U.S.C. 7401–7671q.

Dated: November 6, 1997.

William J. Muszynski,

Acting Regional Administrator.

[FR Doc. 97–30521 Filed 11–19–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 141 and 142

[FRL–5923–6]

Notice of Public Meeting on the Ground Water Disinfection Rule

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule; notice of meeting.

SUMMARY: Notice is hereby give that the Environmental Protection Agency (EPA) is holding a public meeting concerning the Ground Water Disinfection Rule (GWDR). The objective of this meeting is to provide the public with data summaries to support the GWDR development; ask for comments on the data; solicit further data if available; discuss the EPA's next steps for the rule development and data analysis; as well as to identify parties who may be interested in further meetings.

DATES: The meetings will be held on December 18 and 19, 1997.

ADDRESSES: The meetings will be held at the Ana Hotel at 2401 M street, NW, Washington, D.C. 20037. The hotel's phone number is (202) 429–2400.

FOR FURTHER INFORMATION CONTACT: EPA will provide a copy of the data summaries a few weeks prior to the meeting to anyone who requests it. To register for the meeting and for the data summaries please contact the Safe Drinking Water Hotline (800) 426-4791 or Marty Kucera at US EPA (202) 260–7773, kucera.martha@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: The Safe Drinking Water Act as amended in 1996 directs EPA to promulgate regulations requiring disinfection ''as necessary'' for ground water systems. The intention of the GWDR is to reduce microbial contamination risk from public water sources relying on ground water. To determine if treatment is necessary, the rule will establish a framework to identify public water supplies vulnerable to microbial contamination and to develop and implement risk control strategies including but not limited to disinfection. This rulemaking will apply to all public water systems that use ground water, which includes noncommunity systems.

Dated: November 17, 1997.

William R. Diamond,

Acting Director for Office of Ground Water and Drinking Water.

[FR Doc. 97–30556 Filed 11–19–97; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–232, RM–9191]

Radio Broadcasting Services; Eureka, MT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by William G. Brady d/b/a KHJ Radio proposing the allotment of Channel 228C3 at Eureka, Montana, as that community's first local FM broadcast service. The channel can be allotted to Eureka without a site restriction at coordinates 48–52–54 and 115–02–54. Although it is not necessary to site restrict the allotment, we will request concurrence from the Canadian Government for Channel 228C3 as a specially negotiated short-spaced allotment. Channel 228C3 at Eureka is short spaced to vacant Channel 226C, Cranbrook, British Columbia, Canada.

DATES: Comments must be filed on or before January 5, 1998, and reply comments on or before January 20, 1998.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: William G. Brady d/b/a KHJ Radio, 746 Shadow Lane, Kalispell, MT 59901.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 97–232, adopted November 5, 1997, and released November 14, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800, facsimile (202) 857–3805.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–30414 Filed 11–19–97; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AE44

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for the Plant Plagiobothrys Hirtus (Rough Popcornflower)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes endangered

species status pursuant to the Endangered Species Act of 1973, as amended (Act) for the plant *Plagiobothrys hirtus* (rough popcornflower). This species is restricted to wet swales and meadows in Douglas County, Oregon, where only 10 occurrences are known. Most populations are small with few individuals. The total estimated number of plants is 3,000 within a combined area of about 4 hectares (ha) (10 acres (ac)). Threats to this species include destruction and/or alteration of habitat by development and hydrological changes (e.g., wetland fills, draining, construction); spring and summer grazing by domestic cattle, horses, and sheep; roadside maintenance; and competition from native and alien plant species. This proposal, if made final, would implement the Federal protection and recovery programs of the Act for this plant.

DATES: Comments from all interested parties must be received by January 20, 1998. Public hearing requests must be received by January 5, 1998.

ADDRESSES: Comments and materials concerning this proposal should be sent to the State Supervisor, U.S. Fish and Wildlife Service, Oregon State Office, 2600 S.E. 98th Ave., Suite 100, Portland, Oregon 97266. Comments and materials received will be available for public inspection by appointment during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Andrew Robinson, Botanist, at the above address or by telephone (503/231–6179).

SUPPLEMENTARY INFORMATION:

Background

Plagiobothrys hirtus was first collected by Thomas Howell in 1887 and described the following year as *Allocarya hirta* (Greene 1888). Subsequent taxonomic treatments included *A. scouleri* var. *hirta, P. scouleri* var. *hirtus, A. calycosa,* and *P. hirtus* (Gamon and Kagan 1985). Johnston recognized two varieties of the species, *P. hirtus* var. *hirtus* and *P. hirtus* var. *collaricarpus* (Gamon and Kagan 1985). Later, Chambers (1989) considered the material included in the variety *collaricarpus* to be a variety of *P. figuratus,* which elevated the material assigned to *P. hirtus* var. *hirtus* to a full species.

A member of the borage family (Boraginaceae), *Plagiobothrys hirtus* is an annual herb on drier sites or perennial herb on wetter sites (Amsberry and Meinke 1997). It reaches 30–70 centimeters (cm) (1–2 feet (ft)) in height and has a fairly stout stem with widely spreading, coarse, firm hairs on the upper part. The leaves of the main stem are opposite (paired) and the racemes are paired and without bracts. The individual flowers are 1–2 millimeters (0.4–0.6 inches (in)) wide, and white in color (Gamon and Kagan 1985). It grows in scattered groups and reproduces largely by insect-aided cross-pollination and partially by self-pollination. The species is distinguished from other *Plagiobothrys* species by coarse, sparse hairs on the stem and branches (Gamon and Kagan 1985).

Plagiobothrys hirtus grows in open, seasonal wetlands in poorly-drained clay or silty clay loam soils (Gamon and Kagan 1985). The taxon is considered dependent on seasonal flooding and/or fire to maintain open habitat and to limit competition with invasive native and alien plant species such as Himalayan blackberry (*Rubus discolor*), Oregon ash (*Fraxinus latifolia*), teasel (*Dipsacus fullonum*), and pennyroyal (*Mentha pulegium*) (Gamon and Kagan 1985, Almasi and Borgias 1996). *Plagiobothrys hirtus* occurs in open microsites within the one-sided sedge (*Carex unilateralis*)—meadow barley (*Hordeum brachyantherum*) community type within interior valley grasslands. Other frequently associated species include tufted hairgrass (*Deschampsia cespitosa*), American slough grass (*Beckmannia syzigachne*), great camas (*Camassia leichtlinii* var. *leichtlinii*), water foxtail (*Alopecurus geniculatus*), baltic rush (*Juncus balticus*), wild mint (*Mentha arvensis*), Willamette downingia (*Downingia yina*), and bentgrass (*Agrostis alba*) (Gamon and Kagan 1985).

Plagiobothrys hirtus is endemic to the interior valley of the Umpqua River in southwestern Oregon. The species was collected only four times between 1887 and 1961, all at sites within Douglas County (Gamon and Kagan 1985). The taxon was considered possibly extinct (Meinke 1982) until it was rediscovered in 1983 as a result of intensive field surveys (Jimmy Kagan, Oregon Natural Heritage Program (ONHP), pers. comm. 1997). The location of the first specimen, collected by Howell on June 25, 1887, was given only as the Umpqua Valley (Greene 1888). The sites of collections from 1932 and 1939, were from 16 kilometers (km) (10 miles (mi)) east of Sutherlin and 3 km (2 mi) north of Yoncalla, respectively (Siddall and Chambers 1978) . Both sites were surveyed in 1983, but no plants were found (Gamon and Kagan 1985). At the time, the sites were heavily grazed by sheep, which lead the botanists to speculate that grazing was the probable cause of extirpation at these sites (Gamon and Kagan 1985). In 1961, a collection was made adjacent to Interstate 5 south of Yoncalla, a site which remains extant today (J. Kagan, pers. comm. 1997).

Despite the few pre-1961 collections, *Plagiobothrys hirtus* was probably widespread historically on the floodplains of the interior valleys of the Umpqua River. Because *P. hirtus* occurs in low-lying areas, seeds were likely dispersed by flood waters, resulting in a patchy clumped distribution on the floodplains (Gamon and Kagan 1985). Natural processes such as flooding and fire maintained open, wetland habitat (Gamon and Kagan 1985). Draining of wetlands for urban and agricultural uses and road and reservoir construction, however, has altered the original hydrology of the valley to such an extent that the total area of suitable habitat for *P. hirtus* has been significantly reduced. In addition, fire suppression has allowed the invasion of woody and herbaceous species into formerly open wetland habitats (Gamon and Kagan 1985).

Plagiobothrys hirtus is now limited to 10 known occurrences in the vicinity of Sutherlin and Yoncalla, Oregon (ONHP 1996). All extant populations of this species are small (i.e., fewer than 500 individuals) and occur in disjunct habitat. The 10 occurrences are estimated to have a total of about 3,000 individuals and a combined area of less than 4 ha (10 ac) (Amsberry and Meinke 1997).

All extant populations are at risk of extirpation due to a variety of threats (Almasi and Borgias 1996; J. Kagan, pers. comm. 1997; R. Meinke, Oregon State University, pers. comm. 1997). In addition to the ongoing threat of direct loss of habitat from conversion to urban and agricultural uses, hydrological alterations, and fire suppression, other threats to the species include spring and summer livestock grazing, and roadside mowing, spraying and landscaping (Gamon and Kagan 1985, J. Kagan, pers. comm. 1995). Six of the 10 extant occurrences are adjacent to highways. The other four occurrences are in urban or agricultural areas.

Nine of the 10 known occurrences are on private land. The other population is on public land owned by the Oregon Department of Transportation (ODOT). One of the private parcels is owned and managed for the species by The Nature Conservancy (TNC). The other eight occurrences on private lands have no protective management for the species and are at risk of extirpation from development, incompatible grazing practices, and recreational activities (J.

Kagan, pers. comm, 1997; R. Meinke, pers. comm., 1997)

Previous Federal Action

Federal action on *Plagiobothrys hirtus* began when the Secretary of the Smithsonian Institute prepared a report on plants considered to be endangered, threatened, or extinct, pursuant to section 12 of the Act. That report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. On July 1, 1975, the Service published a notice in the **Federal Register** (40 FR 27823) accepting the report as a petition within the context of section 4(c)(2) (now section 4(b)(3)(A)) of the Act. The notice further indicated the Service's intention to review the status of the plant species named therein. As a result of this review, the Service published a proposed rule in the **Federal Register** on June 16, 1976, (41 FR 24523), to determine approximately 1,700 vascular plant species to be endangered pursuant to section 4 of the Act. This list, which included *P. hirtus*, was assembled on the basis of comments and data received by the Smithsonian Institute and the Service in response to House Document No. 94–51 and the July 1, 1975 **Federal Register** publication. In 1978, amendments to the Act required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to proposals already over 2 years old. On December 10, 1979, the Service published a notice in the **Federal Register** (44 FR 70796) of the withdrawal of that portion of the June 16, 1976, proposal that had not been made final, along with four other proposals that had expired.

The Service published an updated Notice of Review for plants on December 15, 1980 (50 FR 82480), including *Plagiobothrys hirtus* as a category 1 candidate species. Category 1 species were those for which the Service had on file substantial information on biological vulnerability and threats to support preparation of listing proposals. This status was changed to category 2 in the November 28, 1983, supplement to the notice (48 FR 53657), and remained as such in the September 27, 1985, Notice of Review (50 FR 39527). Category 2 species were those for which conclusive data on biological vulnerability and threats were not currently available to support proposed rules. In the February 21, 1990, Notice of Review (55 FR 6185), this status was changed back to category 1. Upon publication of the February 28, 1996, Notice of Review in the **Federal Register** (61 FR 7596), the Service ceased using category designations and included *P. hirtus* as a candidate species. Candidate species are those for which the Service has on file sufficient information on biological vulnerability and threats to support proposals to list the species as threatened or endangered.

Section 4(b)(3)(B) of the Act requires the Secretary to make findings on pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. This was the case for *P. hirtus* because of the acceptance of the 1975 Smithsonian Report as a petition. On October 13, 1983, the Service found that the petitioned listing of this species was warranted, but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act; notice of this finding was published on January 20, 1984 (49 FR 2485). Such a finding requires the petition to be recycled pursuant to section 4(b)(3)(C)(I) of the Act. The finding was reviewed annually in October of 1984 through 1995. Publication of this proposal constitutes the final 1-year finding for the petitioned action.

Plagiobothrys hirtus has a listing priority number of 2. Processing of this rule is a Tier 3 activity under the current listing priority guidance.

Summary of Factors Affecting the Species

Section 4 of the Endangered Species Act (16 U.S.C. 1533) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act. These factors and their application to *Plagiobothrys hirtus* Greene (rough popcornflower) are as follows:

A. *The present or threatened destruction, modification, or curtailment of habitat or range. Plagiobothrys hirtus* is threatened by destruction and modification of its wetland habitat (R. Meinke, pers. comm. 1997). Although the species is believed to have been more abundant in the past throughout the interior valleys of the Umpqua River, it is now limited to 10 small, isolated occurrences. Direct loss of habitat from hydrological alterations, wetland filling, or conversion to other uses pose a threat to all 10 extant occurrences.

Two sites occur on private land within the urban boundary of the town of Sutherlin. When first discovered in 1983, these sites were the largest known occurrences (ONHP 1996). One site, with approximately 200 individuals in 1983, has since been destroyed and only 1 plant was found in 1996; development of this site is imminent (J. Kagan, pers. comm. 1997). The other site, estimated to have 300–500 plants when discovered in 1983, has been declining since that time. In 1994, a portion of the wetland at the site was filled, and the remaining area was observed to be significantly impacted by mountain bike recreation; only about 50–100 plants were present (J. Kagan, pers. comm. 1995). Urban development of this site is considered likely (J. Kagan, pers. comm. 1997, R. Meinke, pers. comm. 1997).

Three sites are known on private land about 1.6 km (1 mi) east of Sutherlin. One of these, when discovered in 1983, had about 30–35 plants within an area of about 200 square meters (m^2) (2,200 square feet (ft^2)). The site lies within the Sutherlin urban growth boundary and is slated for development (ONHP 1996). The other two sites were discovered in 1986. One of these had 200 plants in 1986, but by 1988 had only 30–40 plants scattered over an area of 25 m^2 (275 ft^2). Habitat conditions on this site are described as marginal (ONHP 1996). The other site also had about 200 plants when first observed in 1986, but by 1988 had decreased to about 100 plants (ONHP 1996). During the most recent site survey in 1993, only 50–100 plants were seen (J. Kagan, pers. comm. 1997).

Four additional sites are known on private land several kilometers south of the town of Sutherlin. One of these, when discovered in 1983, consisted of about 150 plants growing in an area of about 50 m^2 (550 ft^2). In 1996, only about 50 plants remained. Two other sites were both discovered in 1984. One consisted of 50–60 plants in a 30 m^2 (330 ft^2) area, and the other had 200–300 plants (ONHP 1996). Both occurrences had generally decreasing numbers of individuals through the late 1980's. TNC acquired a portion of the larger of the two occurrences and began formal monitoring in 1995. Individuals were too numerous for a complete census in 1995 with the total population on the site estimated at over 16,000 individuals. In 1996, however, the population plummeted to only 394 plants, a drop attributed to an extensive period of standing water on the preserve that year due to a wet spring (Almasi and Borgias 1996). See Factor E discussion for further details on this population decline. The fourth site, when discovered in 1990, had fewer than 50 plants (J. Kagan, pers. comm. 1995).

The last site is on public land and private land about 22 km (14 mi) north of Sutherlin near the town of Yoncalla. This site is the locality of the 1961 collection that was relocated in 1983. About 200 plants were present in 1988, and the population size has continued to increase under management by ODOT. Although the population on public land appears vigorous, a portion of the population on the adjacent private land appears to have vanished (J. Kagan, pers. comm. 1997). Alterations in site hydrology pose the primary threat to the plants (R. Meinke, Oregon State University, pers. comm. 1997).

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* No evidence of overutilization of this taxon for any purpose exists at this time. However, the plants are easily accessible by road, and the small population sizes make them vulnerable to overcollection by botanical enthusiasts.

C. *Disease or predation.* Grazing has likely been a contributing factor in declining *Plagiobothrys hirtus* numbers throughout its historic range (Gamon and Kagan 1985). Livestock graze in pastures containing four of the occurrences (ONHP 1996). The timing and intensity of grazing, however, determine the effects of grazing on the plant. Grazing during spring and early summer likely threatens *P. hirtus.* When herbivores eat the flower or seed head of the plant, the reproductive output for the year for that individual is destroyed. This activity may be more significant at sites where the species functions as an annual (Gamon and Kagan 1985). However, where fires and flooding no longer occur, grazing may benefit the species. Fall grazing, in particular, may be of benefit because the plant is dormant during at this time and grazing can keep the habitat open by reducing the growth of competing species (Gamon and Kagan 1985). By reducing vegetative growth, fall grazing or mowing (see factor E discussion) may also lower the suitability of the habitat for voles and, thereby, reduce herbivory on the plant.

D. *Inadequacy of existing regulatory mechanisms.* Under the Oregon Endangered Species Act (ORS 564.100–564.135) and pursuant regulations (OAR 603, Division 73), the Oregon Department of Agriculture has listed *Plagiobothrys hirtus* as endangered (OAR 603–73–070). This statute prohibits the ''take'' of State-listed plants on State, county, and city owned or leased lands. Most occurrences of *P. hirtus* occur on private land and are not subject to any current regulations. One site is adjacent to State Route 99 on lands managed by ODOT and has been designated by the agency as a Special Management Area. Mowing and spraying practices have been modified to protect the species at this site where the plant appears to be stable or increasing (N. Testa, Oregon Department of Transportation, pers. comm. 1997).

E. *Other natural or manmade factors affecting its continued existence.* Nine of 10 extant sites of *Plagiobothrys hirtus* occur adjacent to major highways (Interstate 5 and/or State Route 99) or railroad beds. Herbicide spraying and highway landscaping has affected and reduced at least one *P. hirtus* population (J. Kagan, pers. comm. 1995). Mowing is also part of the routine maintenance of roadways. As with livestock grazing, mowing or pesticide spraying during the spring may reduce seed set and thereby negatively affect populations of the plant. Late season mowing has benefited the *P. hirtus* population at the ODOT site, probably by reducing competition from other plants and herbivory by voles (R. Meinke, pers. comm. 1997). With the exception of the *P. hirtus* populations in ODOT's Special Management Area and The Nature Conservancy's Popcorn Swale, none of the roadside occurrences are protected from herbicide spraying, landscaping or early season mowing. In addition, roadside occurrences are at risk of toxic chemical spills and runoff containing oil and grease (N. Testa, pers. comm. 1997). Vehicle accidents also increase the risk of fuel contamination or fire; such an accident recently occurred adjacent to the ODOT population, but the plant was not affected (N. Testa, pers. comm. 1997).

Encroachment by native and alien plant species increases when natural processes like fire or flooding are altered (J. Kagan, pers. comm. 1997; R. Meinke, pers. comm. 1997). After a 1985 fire at one of the sites in Sutherlin, the plants responded the following year with vigorous growth (J. Kagan, pers. comm. 1997). As with late season grazing or mowing, late season fire is likely to be of benefit, while fire which occurs prior to seed set may have negative consequences to *Plagiobothrys hirtus.* The encroachment of weedy, and especially woody, species may also alter site hydrology by capturing more of the available water, an alternative explanation for the dramatic collapse of the population at the TNC preserve between 1995 and 1996 (see Factor A; R. Meinke, pers. comm. 1997).

Because of the small, isolated nature of the occurrences and the few individuals present in most of them, *Plagiobothrys hirtus* is also more susceptible to random events, such as fires during the growing season, insect or disease outbreaks, or toxic chemical spills. The rapid, and as yet unexplained, collapse of the population at the TNC preserve argues for the protection of all extant sites to shield the species from random events that could cause its extinction. Small, isolated populations may also have an adverse effect on pollinator activity, seed dispersal, and gene flow. The existence of both annual and perennial populations in *P. hirtus* suggests that some local genetic differentiation may already exist among populations of the species. Genetic drift within small, isolated populations can lead to a loss of genetic variability and a reduced likelihood of long-term viability (Soulé *in* Lesica and Allendorf 1992).

The Service has carefully assessed the best scientific and commercial information available concerning the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Plagiobothrys hirtus* as endangered. Filling of its wetland habitat for development, livestock grazing during its growing season, invasion by competitive plant species as a result of hydrological alteration and fire suppression, and roadside spraying and mowing continue to reduce plant numbers and habitat. The small, isolated occurrences with few individuals make the species more vulnerable. In addition, continued decreases in the number of occurrences and individuals could result in decreased genetic variability. The varied and cumulative threats to *P. hirtus* indicate the species is in danger of extinction throughout its range. For these reasons, the Service believes that listing *P. hirtus* as endangered is the most appropriate action. Failure to list this species would likely result in extinction of the species. Threatened status is not appropriate because all of the extant occurrences of *P. hirtus* are small, and 8 of 10 occurrences have no protection from mowing, herbicide application, imminent urbanization, and grazing threats. In addition, one of the protected occurrences recently suffered a precipitous, and as yet unexplained, reduction in numbers. Not listing the taxon or listing it as threatened would not provide adequate protection and would not be consistent with the Act.

Critical Habitat

Critical habitat is defined in section 3 of the Act as: (i) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological

features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. ''Conservation'' means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for *P. hirtus*. Service regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist—(1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

Although overutilization is not considered to be a threat to *Plagiobothrys hirtus* at this time, listing of this species as endangered would publicize its rarity and, thus, can make it more attractive to researchers or collectors of rare plants. Most occurrences are small enough that even limited collecting pressure could have adverse impacts. The Service is also aware of a report that, after the species was listed by the State of Oregon, a landowner contacted by State botanists to discuss protective measures for a population on his property allegedly responded by blading the site and destroying the population (J. Kagan, pers. comm. 1997). The publication of precise maps and descriptions of critical habitat in the **Federal Register** would make this plant more vulnerable to incidents of collection and/or vandalism and, therefore, contribute to the decline of this species and increase enforcement problems.

Further, designation of critical habitat for *Plagiobothrys hirtus* is not prudent for lack of benefit. This plant does not occur on Federal land, and it is not believed to have historically occurred on Federal land. Although a potential nexus for Federal action exists for all occurrences within section 404 of the Clean Water Act and for some occurrences in which the Federal Highway Administration may become involved (see ''Available Conservation Measures'' section below), any such Federal involvement would also require consultation under section 7 of the Act. Any action that would adversely modify critical habitat would also jeopardize the continued existence of the species. Most occurrences of this plants are of such small size that a wetland fill less than the 0.13 ha (0.34 ac) regulatory threshold (see ''Available Conservation Measures'' section below) would eliminate it. The designation of critical habitat would not provide additional benefits for this species beyond the protection afforded by listing.

The Service finds, therefore, that designation of critical habitat for this species is not prudent because such designation would likely increase the degree of threat to the species from vandalism and would provide no additional benefit to the species' protection. Protection of the species' habitat will be addressed primarily through the recovery process.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness and conservation actions by Federal, State, and local agencies, private organizations, and individuals. The Act provides for possible land acquisition and cooperation with the states and requires that recovery actions be carried out for all listed species. The protection required by Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service.

Because *Plagiobothrys hirtus* occurs in wetlands, regulatory mechanisms under the Clean Water Act apply to this species. Under section 404 of the Clean Water Act, the U.S. Army Corps of Engineers (Corps) regulates the discharge of fill material into the waters of the United States, including wetlands. To be in compliance with the Clean Water Act, potential applicants are required to notify the Corps prior to undertaking any activity that would result in the fill of wetlands under the Corps' jurisdiction (e.g., grading, discharge of soil or other fill material, etc.). Nationwide Permit Number 26 (33 CFR 330.5 and 33 CFR 330, App. A) has been issued to regulate the fill of wetlands that are not larger than 1.2 ha (3 ac), nor cause the loss of waters of the United States for a distance of more than 150 linear m (500 linear ft) of streambed (61 FR 65874). Where fill would occur in a wetland less than 0.13 ha (0.34 ac) in size, no requirement exists to notify the Corps prior to fill activities. Where fill would occur in a wetland of 0.13 ha (0.34 ac) to 1.2 ha (3 ac) in size, the Corps circulates for agency comment a predischarge notification to the Service and other interested parties prior to determining whether or not the proposed fill activity qualifies under Nationwide Permit 26. Individual permits are required for the discharge of fill into wetlands that are greater than 1.2 ha (3 ac) in size. The review process for the issuance of individual permits is more extensive, and conditions may be included that require the avoidance or mitigation of environmental impacts. The Corps has discretionary authority and can require an applicant to seek an individual permit if the Corps believes that the resources are sufficiently important, regardless of the wetland's size. In practice, the Corps rarely requires an individual permit when a project would qualify for a Nationwide Permit, unless a federally threatened, endangered, or proposed species occurs on the site. If a federally threatened or endangered species or a proposed species may be affected by a proposed project, the Corps must ensure that it does not authorize, fund or carry out any action that is likely to jeopardize the species' continued existence, pursuant to section 7(a)(2) of the Endangered Species Act. Therefore, if an applicant's project site has one or more listed species on it, the Corps would be required to enter into

consultation with the Service. Should *P. hirtus* become listed, the species may be afforded increased protection through consultation on Corps permits.

In addition, the Federal Highway Administration would become involved with *Plagiobothrys hirtus* when highway maintenance is funded, even in part, by the Federal government. Any State highway activity being implemented by ODOT that is partly funded by the Federal government would be subject to review under the Act. In addition, Department of Housing and Urban Development projects and Natural Resources Conservation Service projects in areas that presently support *P. hirtus* would also be subject to review under section 7 of the Act.

Listing of this plant would provide for development of a recovery plan for the plant. Such a plan would bring together State, Federal and private efforts for conservation of the plant. The plan would establish a framework for agencies to coordinate activities and cooperate with each other in conservation efforts. The plan would set recovery priorities, note responsible parties, and estimate costs of various tasks necessary to accomplish them. It would also describe site-specific management actions necessary to achieve conservation and survival of the plant. Additionally, pursuant to section 6 of the Act, the Service would be able to grant funds to Oregon for management actions promoting the protection and recovery of this species.

Two sites currently receive some protective management. The site owned and managed by ODOT has been designated as a Special Management Area. Mowing is restricted to late in the fall when *Plagiobothrys hirtus* is dormant (N. Testa, pers. comm. 1997). The other site in protective ownership is owned and managed by TNC. This site, which currently contains about 400 individual plants, is being actively managed for the protection and development of *P. hirtus* habitat (Almasi and Borgias 1996). Monitoring, life history studies, and transplantation experiments using field-collected seed have been initiated at these two sites. The objectives of these efforts are to increase population sizes, and establish protocols for seed collection, greenhouse propagation, and transplantation techniques (Amsberry and Meinke 1997).

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered plants. All prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale in interstate or foreign commerce, or remove and reduce the species to possession from areas under Federal jurisdiction. In addition, for plants listed as endangered, the Act prohibits the malicious damage or destruction on areas under Federal jurisdiction and the removal, cutting, digging up, or damaging or destroying of such plants in knowing violation of any State law or regulation, including State criminal trespass law. Certain exceptions to the prohibitions apply to agents of the Service and State conservation agencies.

It is the policy of the Service, published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of the listing on proposed and ongoing activities within a species' range. Activities that would constitute a violation of section 9 of the Act include removing, damaging or destroying *Plagiobothrys hirtus* in violation of State law. In addition, collection on Federal lands without a permit and other actions considered to be malicious damage to the species on Federal lands would be prohibited, although *P. hirtus* is not currently known to occur on Federal lands. Activities that are not likely to violate section 9 of the Act include routine landscape maintenance, clearing of vegetation for firebreaks, and livestock grazing on privately-owned land. Questions regarding whether specific activities may constitute a violation of section 9 should be addressed to the State Supervisor of the Service's Oregon State Office (see **ADDRESSES** section).

The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered plants under certain circumstances. Such permits are available for scientific purposes and to enhance the propagation or survival of the species. Requests for copies of the regulations concerning listed plants and animals and general inquiries regarding prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Ecological Services, Endangered Species Permits, 911 N.E. 11th Avenue, Portland, Oregon, 97232–4181 (503/231–2063; FAX 503/231–6243).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments are particularly sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Plagiobothrys hirtus;*

(2) The location of any additional occurrences of this species and the reasons why any habitat should or should not be determined to be critical habitat pursuant to section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of this species; and

(4) Current or planned activities in the subject area and their possible impacts on *Plagiobothrys hirtus.*

Any final decision on this proposal will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Act provides for one or more public hearings on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal in the **Federal Register**. Such requests must be made in writing and addressed to the State Supervisor, Oregon State Office (see **ADDRESSES** section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that Environmental Assessments and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this designation was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Required Determinations

The Service has examined this regulation under the Paperwork Reduction Act of 1995, and found it to contain no information collection requirements.

References Cited

Almasi, K. and D. Borgias. 1996. Monitoring plan: *Plagiobothrys hirtus* ssp. *hirtus*. Unpublished report by The Nature Conservancy, Southwestern Oregon Office, Ashland, OR. 5 pp.

Amsberry, K. and R.J. Meinke. 1997. Restoring the Popcorn-flower. U.S. Fish and Wildlife Service Endangered Species Bulletin. 22(2):12–13.

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Oregon Natural Heritage Program. 1996. Biological Conservation Database: *Plagiobothrys hirtus* Element Occurrence Records. Unpublished report of the Oregon Natural Heritage Program, Portland, Oregon. 12 pp.

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Authors: The primary authors of this proposed rule are Josh Millman and Cat Brown, U.S. Fish and Wildlife Service, Oregon State Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species. Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, the Service hereby proposes to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.12(h) by adding the following, in alphabetical order under FLOWERING PLANTS, to the List of Endangered and Threatened Plants to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common Name						
*	*	*	*	*	*	*	
FLOWERING PLANTS							
*	*	*	*	*	*	*	
Plagiobothrys hirtus	Rough popcornflower.	U.S.A. (OR)	Boraginaceae/ borage.	E	.....	NA	NA
*	*	*	*	*	*	*	

Dated: October 22, 1997.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 97–30473 Filed 11–19–97; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register

Vol. 62, No. 224

Thursday, November 20, 1997

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 97–067–2]

Bejo Zaden BV; Availability of Determination of Nonregulated Status for Genetically Engineered Radicchio Rosso

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public of our determination that Bejo Zaden BV's Radicchio rosso lines designated as RM3–3, RM3–4, and RM3–6, which have been genetically engineered for male sterility and tolerance to the herbicide glufosinate as a marker, are no longer considered regulated articles under our regulations governing the introduction of certain genetically engineered organisms. Our determination is based on our evaluation of data submitted by Bejo Zaden BV in its petition for a determination of nonregulated status and an analysis of other scientific data. This notice also announces the availability of our written determination document and its associated environmental assessment and finding of no significant impact.

EFFECTIVE DATE: November 7, 1997.

ADDRESSES: The determination, an environmental assessment and finding of no significant impact, the petition, and any written comments received regarding the petition may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect those documents are asked to call in advance of visiting at (202) 690–2817 to facilitate entry into the reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Subhash Gupta, Biotechnology Evaluation, BSS, PPQ, APHIS, 4700 River Road Unit 147, Riverdale, MD 20737–1236; (301) 734–8761. To obtain a copy of the determination or the environmental assessment and finding of no significant impact, contact Ms. Kay Peterson at (301) 734–4885; e-mail: mkpeterson@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

On May 28, 1997, the Animal and Plant Health Inspection Service (APHIS) received a petition (APHIS Petition No. 97–148–01p) from Bejo Zaden BV (Bejo) of Warmenhuizen, The Netherlands, seeking a determination that Radicchio rosso (red-hearted chicory) lines designated as RM3–3, RM3–4, and RM3–6, which have been genetically engineered for male sterility and tolerance to the herbicide glufosinate as a marker, do not present a plant pest risk and, therefore, are not regulated articles under APHIS' regulations in 7 CFR part 340.

On August 27, 1997, APHIS published a notice in the **Federal Register** (62 FR 45387–45388, Docket No. 97–067–1) announcing that the Bejo petition had been received and was available for public review. The notice also discussed the role of APHIS, the Environmental Protection Agency, and the Food and Drug Administration in regulating Radicchio rosso lines RM3–3, RM3–4, and RM3–6 and food products derived from them. In the notice, APHIS solicited written comments from the public as to whether these Radicchio rosso lines posed a plant pest risk. The comments were to have been received by APHIS on or before October 27, 1997. APHIS received no comments on the subject petition during the designated 60-day comment period.

Analysis

Radicchio rosso (*Chichorium intybus L.*) lines RM3–3, RM3–4, and RM3–6 have been genetically engineered with a *barnase* gene from *Bacillus amyloliquefaciens* encoding a ribonuclease which inhibits pollen formation and results in male sterility of the transformed plants. The subject Radicchio rosso lines also contain the *nptII* selectable marker gene and the *bar* gene isolated from the bacterium *Streptomyces hygroscopicus*. The *bar* gene encodes a phosphinothricin acetyltransferase (PAT) enzyme, which, when introduced into a plant cell, inactivates glufosinate. Linkage of the *barnase* gene, which induces male sterility, with the *bar* gene, a glufosinate tolerance gene used as a marker, enables identification of the male sterile line for the production of pure hybrid seed. The subject Radicchio rosso lines were transformed by the *Agrobacterium tumefaciens* method, and expression of the introduced genes is controlled in part by gene sequences derived from the plant pathogen *A. tumefaciens*.

Radicchio rosso lines RM3–3, RM3–4, and RM3–6 have been considered regulated articles under APHIS' regulations in 7 CFR part 340 because they contain regulatory gene sequences derived from a plant pathogen. However, evaluation of field data reports from field tests of the subject Radicchio rosso lines conducted in Europe since 1993 and under an APHIS permit since 1995, indicates that there were no deleterious effects on plants, nontarget organisms, or the environment as a result of the environmental release of these Radicchio rosso lines.

Determination

Based on its analysis of the data submitted by Bejo and a review of other scientific data and field tests of the subject Radicchio rosso lines, APHIS has determined that Radicchio rosso lines RM3–3, RM3–4, and RM3–6: (1) Exhibit no plant pathogenic properties; (2) are no more likely to become a weed than Radicchio rosso lines developed by traditional breeding techniques; (3) are unlikely to increase the weediness potential for any other cultivated or wild species with which they can interbreed; (4) will not cause damage to raw or processed agricultural commodities; and (5) will not harm threatened or endangered species or other organisms, such as bees, that are beneficial to agriculture. Therefore, APHIS has concluded that Radicchio rosso lines RM3–3, RM3–4, and RM3–6 and any progeny derived from hybrid crosses with other nontransformed Radicchio rosso varieties will not exhibit new plant pest properties, i.e., properties substantially different from any observed for the subject Radicchio rosso lines already field tested, or those observed for Radicchio rosso in traditional breeding programs.

The effect of this determination is that Bejo's Radicchio rosso lines designated as RM3–3, RM3–4, and RM3–6 are no longer considered regulated articles under APHIS' regulations in 7 CFR part 340. Therefore, the requirements pertaining to regulated articles under those regulations no longer apply to the field testing, importation, or interstate movement of Bejo's Radicchio rosso lines RM3–3, RM3–4, and RM3–6 or their progeny. However, the importation of the subject Radicchio rosso lines or seeds capable of propagation are still subject to the restrictions found in APHIS' foreign quarantine notices in 7 CFR part 319.

National Environmental Policy Act

An environmental assessment (EA) has been prepared to examine the potential environmental impacts associated with this determination. The EA was prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372). Based on that EA, APHIS has reached a finding of no significant impact (FONSI) with regard to its determination that Radicchio rosso lines RM3–3, RM3–4, and RM3–6 and lines developed from them are no longer regulated articles under its regulations in 7 CFR part 340. Copies of the EA and the FONSI are available upon request from the individual listed under **FOR FURTHER INFORMATION CONTACT.**

Done in Washington, DC, this 14th day of November 1997.

Craig A. Reed,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–30507 Filed 11–19–97; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 97–094–1]

Monsanto Co.; Receipt of Petition for Determination of Nonregulated Status for Potato Lines Genetically Engineered for Insect and Virus Resistance

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has received a petition from Monsanto Company seeking a determination of nonregulated status for certain potato lines genetically engineered for resistance to the Colorado potato beetle and potato leaf roll virus. The petition has been submitted in accordance with our regulations concerning the introduction of certain genetically engineered organisms and products. In accordance with those regulations, we are soliciting public comments on whether these potato lines present a plant pest risk.

DATES: Written comments must be received on or before January 20, 1998.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 97–094–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 97–094–1. A copy of the petition and any comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing access to that room to inspect the petition or comments are asked to call in advance of visiting at (202) 690–2817 to facilitate entry into the reading room.

FOR FURTHER INFORMATION CONTACT: Dr. James White, Biotechnology Evaluation, BSS, PPQ, APHIS, Suite 5B05, 4700 River Road Unit 147, Riverdale, MD 20737–1236; (301) 734–5940. To obtain a copy of the petition, contact Ms. Kay Peterson at (301) 734–4885; e-mail: mkpeterson@aphis.usda.gov.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, ''Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests,'' regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered organisms and products are considered ''regulated articles.''

The regulations in § 340.6(a) provide that any person may submit a petition to the Animal and Plant Health Inspection Service (APHIS) seeking a determination that an article should not be regulated under 7 CFR part 340. Paragraphs (b) and (c) of § 340.6 describe the form that a petition for determination of nonregulated status must take and the information that must be included in the petition.

On July 23, 1997, APHIS received a petition (APHIS Petition No. 97–204–01p) from Monsanto Company (Monsanto) of St. Louis, MO, requesting a determination of nonregulated status under 7 CFR part 340 for seven NewLeaf® Plus Russet Burbank potato lines (RBMT21–129, RBMT21–152, RBMT21–350, RBMT22–82, RBMT22–186, RBMT22–238, RBMT22–262), which have genetically engineered for resistance to the Colorado potato beetle (CPB) and potato leaf roll virus (PLRV). The Monsanto petition states that the subject potato lines should not be regulated by APHIS because they do not present a plant pest risk.

As described in the petition, all seven of the subject Russet Burbank potato lines have been genetically engineered to contain the *cryIIIA* gene from *Bacillus thuringiensis* subsp. *tenebrionis* (Btt), which encodes an insecticidal protein that is effective against CPB, and the PLRV replicase gene (*PLRVrep*), which imparts resistance to PLRV. In addition to the *cryIIIA* gene and the *PLRVrep* gene, these potato lines contain either the *nptII* selectable marker gene (RBMT21–129, RBMT21–152, and RBMT21–350) or the *CP4 EPSPS* selectable marker gene (RBMT22–82, RBMT22–186, RBMT22–238, and RBMT22–262). The subject potato lines were developed through the use of the *Agrobacterium tumefaciens* transformation system, and expression of the introduced genes is controlled in part by gene sequences derived from the plant pests *A. tumefaciens* and Figwort mosaic virus.

The subject potato lines have been considered regulated articles under the regulations in 7 CFR part 340 because they contain gene sequences derived from plant pests. These potato lines have been evaluated in field trials conducted since 1994 under APHIS permits. In the process of reviewing the applications for field trials of the subject potato lines, APHIS determined that the vectors and other elements were disarmed and that the trials, which were conducted under conditions of reproductive and physical containment or isolation, would not present a risk of plant pest introduction or dissemination.

In the Federal Plant Pest Act, as amended (7 U.S.C. 150aa *et seq.*), ''plant pest'' is defined as ''any living stage of: Any insects, mites, nematodes, slugs, snails, protozoa, or other invertebrate animals, bacteria, fungi, other parasitic

plants or reproductive parts thereof, viruses, or any organisms similar to or allied with any of the foregoing, or any infectious substances, which can directly or indirectly injure or cause disease or damage in any plants or parts thereof, or any processed, manufactured or other products of plants.'' APHIS views this definition very broadly. The definition covers direct or indirect injury, disease, or damage not just to agricultural crops, but also to plants in general, for example, native species, as well as to organisms that may be beneficial to plants, for example, honeybees, rhizobia, etc.

The U.S. Environmental Protection Agency (EPA) is responsible for the regulation of pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (7 U.S.C. 136 *et seq.*). FIFRA requires that all pesticides, including insecticides, be registered prior to distribution or sale, unless exempt by EPA regulation. In this regard, EPA has issued a registration to Monsanto for full commercialization of the plant pesticide Btt Cry III(A) delta endotoxin and the genetic material necessary for its production in potato. Residue tolerances for pesticides are established by EPA under the Federal Food, Drug and Cosmetic Act (FFDCA), as amended (21 U.S.C. 301 *et seq.*), and the Food and Drug Administration (FDA) enforces tolerances set by EPA under the FFDCA. In addition to the registration, EPA has issued exemptions from the requirement of a tolerance for residues of the subject plant pesticide CryIII(A) in potatoes, for the NPTII and CP4 EPSPS proteins as plant pesticide inert ingredients in all plants, and for the PLRV replicase protein in or on all raw agricultural commodities.

FDA published a statement of policy on foods derived from new plant varieties in the **Federal Register** on May 29, 1992 (57 FR 22984–23005). The FDA statement of policy includes a discussion of FDA's authority for ensuring food safety under the FFDCA, and provides guidance to industry on the scientific considerations associated with the development of foods derived from new plant varieties, including those plants developed through the techniques of genetic engineering. Monsanto has entered into consultation with FDA on the subject potato lines.

In accordance with § 340.6(d) of the regulations, we are publishing this notice to inform the public that APHIS will accept written comments regarding the Petition for Determination of Nonregulated Status from any interested person for a period of 60 days from the date of this notice. The petition and any comments received are available for public review, and copies of the petition may be ordered (see the **ADDRESSES** section of this notice).

After the comment period closes, APHIS will review the data submitted by the petitioner, all written comments received during the comment period, and any other relevant information. Based on the available information, APHIS will furnish a response to the petitioner, either approving the petition in whole or in part, or denying the petition. APHIS will then publish a notice in the **Federal Register** announcing the regulatory status of Monsanto's NewLeaf® Plus Russet Burbank potato lines RBMT21–129, RBMT21–152, RBMT21–350, RBMT22–82, RBMT22–186, RBMT22–238, RBMT22–262 and the availability of APHIS' written decision.

Authority: 7 U.S.C. 150aa–150jj, 151–167, and 1622n; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.2(c).

Done in Washington, DC, this 14th day of November 1997.

Craig A. Reed,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–30508 Filed 11–19–97; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF COMMERCE

Economics and Statistics Administration

Secretary's 2000 Census Advisory Committee Meeting

AGENCY: Economics and Statistics Administration, Department of Commerce.

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Public Law 92–463, as amended by P.L. 94–409, P.L. 96–523, and P.L. 97–375), we are giving notice of a meeting of the Commerce Secretary's 2000 Advisory Committee. The meeting will convene on December 4–5, 1997, at the Embassy Suites Hotel, 1250 22nd Street, NW., Washington, DC 20037. The Committee will discuss work plans for the Census 2000 Dress Rehearsal, including the tabulation of data collected using the new questions that follow the revised standards for the classification of Federal data on race and ethnicity recently issued by the Office of Management and Budget.

The Committee is composed of a Chair, Vice-Chair, and up to thirty-five member organizations, all appointed by the Secretary of Commerce. The Committee will consider the goals of Census 2000 and user needs for information provided by that census. The Committee will provide a perspective from the standpoint of the outside user community about how operational planning and implementation methods proposed for Census 2000 will realize those goals and satisfy those needs. The Committee shall consider all aspects of the conduct of the 2000 census of population and housing and shall make recommendations for improving that census.

DATES: On Thursday, December 4, 1997, the meeting will begin at 8:30 a.m. and adjourn for the day at 4:30 p.m. On Friday, December 5, 1997, the meeting will begin at 8:30 a.m. and adjourn at 4:00 p.m.

ADDRESSES: The meeting will take place at the Embassy Suites Hotel, 1250 22nd Street, N.W., Washington, DC 20037.

FOR FURTHER INFORMATION CONTACT: Anyone wishing additional information about this meeting, or who wishes to submit written statements or questions, may contact Maxine Anderson-Brown, Committee Liaison Officer, Department of Commerce, Bureau of the Census, Room 3039, Federal Building 3, Washington, DC 20233, telephone: 301–457–2308, TDD 301–457–2540.

SUPPLEMENTARY INFORMATION: A brief period will be set aside on Friday afternoon for public comment and questions. However, individuals with extensive questions or statements for the record must submit them in writing to the Commerce Department official named above at least three working days prior to the meeting.

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kathy Maney; her telephone number is 301–457–2308, TDD 301–457–2540.

Dated: November 17, 1997.

Lee Price,

Acting Under Secretary for Economic Affairs, Economics and Statistics Administration.

[FR Doc. 97–30661 Filed 11–18–97; 2:52 pm]

BILLING CODE 3510–EA–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–801, A–428–801, A–475–801, A–588–804, A–485–801, A–559–801, A–401–801, A–412–801]

Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Romania, Singapore; Sweden and the United Kingdom; Amended Final Results of Antidumping Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of amended final results of antidumping duty administrative reviews

SUMMARY: On October 17, 1997, the Department of Commerce (the Department) published the final results of administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof from France, Germany, Italy, Japan, Romania, Singapore, Sweden, and the United Kingdom. The classes or kinds of merchandise covered by these reviews are ball bearings and parts thereof (BBs), cylindrical roller bearings and parts thereof (CRBs), and spherical plain bearings and parts thereof (SPBs). The period of review is May 1, 1995, through April 30, 1996. Based on the correction of certain ministerial errors, we have changed the margins for BBs for seven companies, CRBs for three companies, and SPBs for one company.

EFFECTIVE DATE: November 20, 1997.

FOR FURTHER INFORMATION CONTACT: Jay Biggs or Robin Gray, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Tariff Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations as codified at 19 CFR Part 353 (1997).

Background

On October 17, 1997, the Department published the final results of its administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof from France, Germany, Italy, Japan, Romania, Singapore, Sweden, and the United Kingdom (62 FR 54043). The review covered 21 manufacturers/exporters and the period May 1, 1995, through April 30, 1996. After publication of our final results, we received timely allegations from the petitioner and several respondents that we had made ministerial errors in calculating the final results. We corrected our calculations, where we agree that we made ministerial errors, in accordance with section 751(A) of the Tariff Act. *See* company-specific analysis memoranda for a description of the changes that we made to correct the ministerial errors.

Amended Final Results of Reviews

As a result of the amended margin calculations, the following weighted-average percentage margins exist for the period May 1, 1995, through April 30, 1996:

Manufacturer/exporter and country	BBs rate (percent)	CRBs rate (percent)	SPBs rate (percent)
France: SKF	10.80	.....	.....
Germany: FAG	[1] 12.40	[1] 19.49	[1] 10.32
Japan:			
NPBS	7.87	.....	.....
NSK Ltd	6.65	7.16	.....
NTN	7.02	4.33	7.19
Romania: TIE	[1] 0.20	.....	.....
Singapore NMB/Pelmec Ind	4.85		
United Kingdom:			
NSK/RHP	16.33	67.92	.....
Barden	3.99	.....	.....

[1] This rate did not change as a result of the correction of ministerial errors.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Because sampling and other simplification methods prevent entry-by-entry assessments, we have calculated, wherever possible, an exporter/importer-specific assessment rate for each class or kind of AFBs. We will also direct the Customs Service to collect cash deposits of estimated antidumping duties on all appropriate entries in accordance with the procedures discussed in the final results of review (62 FR 54043) and as amended by this determination. The amended deposit requirements are effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until publication of the final results of the next administrative reviews.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d) or conversion to judicial protective order is hereby requested. Failure to comply is a violation of the APO.

These administrative reviews and this notice are in accordance with section 751(a)(1) and (h) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.28.

Dated: November 13, 1997.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 97–30558 Filed 11–19–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–849]

Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final determination of sales at less than fair value.

EFFECTIVE DATE: November 20, 1997.

FOR FURTHER INFORMATION CONTACT: Lyn Baranowski, Doreen Chen, Gregory Weber, N. Gerard Zapiain or Stephen Jacques, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–1385, (202) 482–0413, (202) 482–1102, (202) 482–1395 or (202) 482–1391, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (''the Act'') by the Uruguay Rounds Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR Part 353 (April 1, 1996).

Final Determination

We determine that certain cut-to-length carbon steel plate from the People's Republic of China (''PRC'') is being, or is likely to be, sold in the United States at less than fair value (''LTFV''), as provided in section 733 of the Act. The estimated margins are shown in the ''Suspension of Liquidation'' section of this notice.

Case History

The petitioners in this investigation are Geneva Steel Company and Gulf States Steel Company.

The respondents which are PRC firms unless otherwise indicated:

(1) China Metallurgical Import & Export Liaoning Company (''Liaoning''), an exporter of subject merchandise; Wuyang Iron and Steel Company (''Wuyang''), which produced the merchandise sold by Liaoning;

(2) Anshan Iron and Steel Complex (''AISCO''), a producer of subject merchandise; Angang International Trade Corporation (''Anshan International''), a wholly-owned AISCO subsidiary in China which exported subject merchandise made by AISCO, and Sincerely Asia, Limited (''SAL'') a partially-owned Hong Kong affiliate of AISCO involved in sales of subject merchandise to the United States (collectively, ''Anshan'');

(3) Baoshan Iron & Steel Corporation (''Bao''), a producer of subject merchandise; Bao Steel International Trade Corporation (''Bao Steel ITC''), a wholly-owned subsidiary of Bao responsible for selling Bao material domestically and abroad; and Bao Steel Metals Trading Corporation (''B. M. International''), a partially-owned U.S. subsidiary involved in U.S. sales, (collectively ''Baoshan'');

(4) Wuhan Iron & Steel Company (''Wuhan'') a producer of subject merchandise; International Economic and Trading Corporation (''IETC''), a wholly-owned subsidiary responsible for exporting Wuhan merchandise; Cheerwu Trader Ltd. (''Cheerwu'') a partially-owned Hong Kong affiliate of Wuhan involved in sales of subject merchandise to the United States (collectively ''WISCO'');

(5) Shanghai Pudong Iron and Steel Company (''Shanghai Pudong'') a producer and exporter of subject merchandise. During the investigation, we also requested information from and conducted verification of Shanghai No.1, a non-exporting producer of subject merchandise which Shanghai Pudong had earlier indicated shared a common trustee, Shanghai Metallurgical Holding (Group) Co. (''Shanghai Metallurgical'').

We consider Liaoning, Anshan, Baoshan, WISCO and Shanghai Pudong to be sellers of the subject merchandise during the POI.

Since the preliminary determination in this investigation (*Preliminary Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from the People's Republic of China*, 62 FR at 31972 (June 11, 1997)), the following events have occurred:

From June through July 1997, we verified the questionnaire responses of the respondents. Pursuant to section 782(d) of the Act, the Department rejected certain portions of submissions submitted by Anshan, Baoshan and WISCO one week prior to verification. On August 5, 1997 we issued our verification reports.

At the request of the Department, interested parties submitted additional information on surrogate values on August 5, 1997, for consideration in the final determination.

The petitioners and all of the respondents submitted case briefs on August 29, 1997, and rebuttal briefs on September 9, 1997. The Department held a public hearing for this investigation on September 16, 1997 at the requests of respondents and petitioners.

On October 24, 1997, the Department entered into an Agreement with the Government of the PRC suspending this investigation. Pursuant to Section 734(g) of the Act, petitioners, Liaoning and Wuyang have requested that this investigation be continued. If the ITC's final determination is negative, the Agreement shall have no force or effect and the investigation shall be terminated. *See* Section 734(f)(3)(A) of the Act. If, on the other hand, the Commission's determination is affirmative, the Agreement shall remain in force but the Department shall not issue an Antidumping duty order so long as (1) the Agreement remains in force, (2) the Agreement continues to meet the requirements of subsection (d) and (l) of the Act, and the parties to the Agreement carry out their obligations under the Agreement in accordance with its terms. *See* Section 734(f)(3)(B) of the Act.

Scope of the Investigation

The products covered by this investigation are hot-rolled iron and non-alloy steel universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm and of a thickness of not less than 4 mm, not in coils and without patterns in relief), of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain iron and non-alloy steel flat-rolled products not in coils, of rectangular shape, hot-rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 mm or more in thickness and of a width which exceeds 150 mm and measures at least twice the thickness. Included as subject merchandise in this petition are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been ''worked after rolling'')—for example, products which have been bevelled or rounded at the edges. This merchandise is currently classified in the Harmonized Tariff Schedule of the United States (HTS) under item numbers 7208.40.3030, 7208.40.3060,

7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000. Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Period of Investigation

The period of investigation (POI) is April 1, 1996, through September 30, 1996.

Separate Rates

All of the respondents have requested separate, company-specific rates. In their questionnaire responses, respondents state that they are independent legal entities. Of the five respondents, Anshan, Baoshan, Liaoning and WISCO have reported that they are collectively-owned enterprises, registered as being ''owned by all the people.'' Shanghai Pudong and Shanghai No. 1 are ''owned by all the people'; Shanghai Pudong has also stated that these two firms are owned by Shanghai Metallurgical, which is in turn is also owned by ''all the people.'' Shanghai Pudong stated that it does not have any corporate relationship with any level of the PRC Government.

As stated in the *Final Determination of Sales at Less than Fair Value: Silicon Carbide from the People's Republic of China,* 59 FR at 22585, 22586 (May 2, 1994) (''*Silicon Carbide*'') and in the *Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from the People's Republic of China,* 60 FR at 22544 (May 8, 1995) (''*Furfuryl Alcohol*''), ownership of a company by ''all the people'' does not require the application of a single rate. Accordingly, each of these respondents is eligible for consideration for a separate rate.

To establish whether a firm is sufficiently independent to be entitled to a separate rate, the Department analyzes each exporting entity under the test established in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China,* 56 FR. at 20588 (May 6, 1991) (''*Sparklers*'') and amplified in *Silicon Carbide.* Under the separate rates criteria, the Department assigns separate rates in nonmarket-economy cases only if an exporter can affirmatively demonstrate the absence of both (1) *de jure* and (2) *de facto* governmental control over export activities. *See Silicon Carbide* and *Furfuryl Alcohol.*

1. Absence of *De Jure* Control

The respondents have placed on the administrative record a number of documents to demonstrate absence of *de jure* control. Respondents submitted the ''Law of the PRC on Industrial Enterprises Owned By the Whole People,'' adopted on April 13, 1988 (the Industrial Enterprises Law). The Department has previously determined that this Civil Law does not confer *de jure* independence on the branches of government-owned and controlled enterprises. *See Sigma Corp* v. *United States,* 890 F. Supp. 1077, 1080 (CIT 1995). However, the Industrial Enterprises Law has been analyzed by the Department in past cases and has been found to sufficiently establish an absence of *de jure* control of companies ''owned by the whole people,'' such as those participating in this case. (*See e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Partial-Extension Steel Drawer Slides with Rollers from the People's Republic of China,* 60 FR at 14725, 14727 (June 5, 1995) (''*Drawer Slides*''); *Notice of Preliminary Determination of Sales at Less Than Fair Value: Honey from the People's Republic of China,* 60 FR at 14725, 14727 (March 20, 1995); and *Furfuryl Alcohol.* The Industrial Enterprises Law provides that enterprises owned by ''the whole people'' shall make their own management decisions, be responsible for their own profits and losses, choose their own suppliers, and purchase their own goods and materials. The Regulations of the People's Republic of China for Controlling the Registration of Enterprises as Legal Persons (Legal Persons Regulations), issued on July 13, 1988 by the State Administration for Industry and Commerce of the PRC, provide that, to qualify as legal persons, companies must have the ''ability to bear civil liability independently'' and the right to control and manage their business. These regulations also state that, as an independent legal entity, a company is responsible for its own profits and losses. *See Notice of Final Determination of Sales at Less Than Fair Value: Manganese Metal from the People's Republic of China,* 60 FR at 56046 (November 6, 1995).

In sum, in prior cases, the Department has analyzed the Chinese laws and regulations on the record in this case, and found that they establish an absence of *de jure* control for the types of companies seeking separate rates in this investigation. We have no new information in these proceedings which would cause us to reconsider this determination.

2. Absence of *De Facto* Control

The Department typically considers four factors in evaluating whether each respondent is subject to *de facto* governmental control of its export functions: (1) whether the export prices are set by or are subject to the approval of a governmental authority; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses. *See, e.g., Silicon Carbide* and *Furfuryl Alcohol.* These factors are not necessarily exhaustive and other relevant indicia of government control may be considered.

Respondents have asserted, and we verified, the following: (1) they establish their own export prices independently of the government and without the approval of a government authority; (2) they negotiate contracts, without guidance from any governmental entities or organizations; (3) they make their own personnel decisions including the selection of management; and (4) they retain the proceeds of their export sales, use profits according to their business needs, and have the authority to obtain loans. In addition, respondents' questionnaire responses indicate that company-specific pricing during the POI does not suggest coordination among exporters. During the verification proceedings, Department officials viewed such evidence as sales documents, company correspondence, and bank statements. This information supports a finding that there is a *de facto* absence of government control of the export functions of these companies. Consequently, we have determined that the five responding exporters have met the criteria for the application of separate rates. We determine, as facts available, that non-responsive exporters have not met the criteria for application of separate rates. *See also* Comments 1 and 55.

China-Wide Rate

The petition filed on November 5, 1996 identified 28 PRC steel producers with the capacity to produce cut-to-length carbon steel plate during the POI. We received adequate responses from the five respondents identified above. We received certification of non-

shipment with respect to seven companies from the China Chamber of Commerce for Metals and Chemicals (CCCMC) in a letter dated January 22, 1997. Additionally, we received a letter from one respondent factory indicating shipments through parties which have not responded to the questionnaire. *See* Non-Responsive Exporters section above. All other companies did not respond to our questionnaire. Further, U.S. import statistics indicate that the total quantity and value of U.S. imports of cut-to-length carbon steel plate from the PRC during the POI is greater that the total quantity and value of plate reported by all PRC companies that submitted questionnaire responses. Given these discrepancies, we conclude that not all exporters of PRC plate responded to our questionnaire. Accordingly, we are applying a single antidumping rate—the China-wide rate—to all exporters in the PRC other than those receiving an individual rate, based on our presumption that those respondents who failed to respond constitute a single enterprise under common control by the PRC government. *See, e.g., Final Determination of Sales at Less Than Fair Value: Bicycles From the People's Republic of China,* 61 FR at 19026 (April 30, 1996) (*Bicycles*).

Facts Available

This China-wide antidumping rate is based on facts available. Section 776(a)(2) of the Act provides that ''if an interested party or any other person—(A) withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782; (C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified as provided in section 782(i), the administering authority * * * shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title.''

In addition, section 776(b) of the Act provides that, if the Department finds that an interested party ''has failed to cooperate by not acting to the best of its ability to comply with a request for information,'' the Department may use information that is adverse to the interests of that party as the facts otherwise available. The statute also provides that such an adverse inference may be based on secondary information, including information drawn from the petition.

As discussed above, all PRC exporters that do not qualify for a separate rate are treated as a single enterprise. Because some exporters of the single enterprise failed to respond to the Department's requests for information, that single enterprise is considered to be uncooperative. Accordingly, consistent with section 776(b)(1) of the Act, we have applied, as total adverse facts available, the highest margin calculated for a respondent in this proceeding. Based on our comparison of the calculated margins for the other respondents in this proceeding to the margins in the petition, we have concluded that the highest calculated margin is the most appropriate record information on which to form the basis for dumping calculations in this investigation since this rate is higher than the highest rate in the petition. Accordingly, the Department has based the China-wide rate on information from respondents. In this case, the highest calculated margin is 128.59 percent.

Fair Value Comparisons

To determine if the cut-to-length plate from the PRC sold to the United States by the PRC exporters receiving separate rates was sold at less than fair value, we compared the ''United States Price'' (USP) to NV, as specified in the ''United States Price'' and ''Normal Value'' sections of this notice.

United States Price

Export Price

We based USP on export price (EP) in accordance with section 772(a) of the Act, because the subject merchandise was sold to unrelated purchasers in the United States prior to importation and because constructed export price methodology was not otherwise indicated. In accordance with section 777A(d)(1)(A)(i) of the Act, we compared POI-wide weighted-average export prices (EPs) to NV based on the factors of production. See Company Specific Calculation Memoranda, October 24, 1997.

For those exporters that responded to the Department's questionnaire, we calculated EP based on prices to unaffiliated purchasers in the United States. We made deductions, where appropriate, for foreign inland freight, ocean freight, marine insurance, and foreign brokerage. *See* ''Factor Valuations'' section of this notice.

Normal Value

A. Factors of Production

Because the Department has determined that China is a non-market economy (''NME'') country, we calculated NV based on factors of production reported by respondents in accordance with section 773(c) of the Act. Where an input was sourced from a market economy and paid for in market economy currency, we used the actual price paid for the input to calculate the NV in accordance with our practice. *See Lasko Metal Products* v. *United States* (''*Lasko*''), 437 F. 3d 1442, 1443 (Fed. Cir. 1994). We valued the remaining factors using publicly available information from India where possible. Where appropriate Indian values were not available, we for the most part used publicly available information from Indonesia. In one case, when no appropriate value was available from a country at the same level of development, we used a U.S. value. *See* Comment 19 (slag).

B. Factor Valuations

The selection of the surrogate values was based on the quality and contemporaneity of the data. Where possible, we attempted to value material inputs on the basis of tax-exclusive domestic prices. Where we were not able to rely on domestic prices, we used import prices to value factors. To the extent possible, we removed from the import data import prices from countries which the Department has previously determined to be NMEs. As appropriate, we converted import prices for inputs to delivered prices. For those values not contemporaneous with the POI, we adjusted for inflation using wholesale price indices (WPI), or consumer price indices (CPI) published in the International Monetary Fund's *International Financial Statistics.* For a complete analysis of our selection of surrogate values, see each company's Factors Valuation Memorandum dated October 24, 1997. We have made the following changes to surrogate valuation since the preliminary determination:

To value coal, we used import prices for the months contemporaneous with the POI for which such data were available from the *Monthly Statistics of the Foreign Trade of India* (*Monthly Statistics*). We also valued coal as two separate categories: coking coal and other coal. *See* Comment 16.

To value iron ore, for the final determination, we have, to the extent possible, treated different types of iron ore as separate factors of production (*i.e.,* we treated the different types of iron ore as separate inputs with separate surrogate values). When a producer has purchased any type of iron ore from one or more market economy suppliers, we have relied, to the fullest extent possible, on the market economy purchase prices which were verified by

the Department. When a given producer sourced a particular type of iron ore only locally, or imported only an insignificant percentage of that type or iron ore, we valued that type of iron ore for that producer based on Indian *Monthly Statistics*. *See* Comment 16.

To value steel scrap, we used import prices for the months contemporaneous with the POI for which such data were available from the *Monthly Statistics*. *See* Comment 17.

To value iron scrap, fluorite/fluospar, ferromanganese, magnesium ore, aluminum and coke, we used Indian import values for the months contemporaneous with the POI for which such data were available from the *Monthly Statistics*. *See* Comment 18.

To value scale, we used the United States market price for slag, which is a similar product. *See* Comment 19.

To value dolomite, we used import prices for ''agglomerated dolomite'' from the *Monthly Statistics*. *See* Comment 15.

To value stones, we used data from the ''Stone, Sand and Gravel'' SITC 273 category from the *United Nations Commodity Trade Statistics*. *See* Comment 20.

To value silicon manganese, we used import prices from the *Monthly Statistics*. *See* Comment 21.

To value barge rates, we used a simple average of the rates used in the preliminary determination and river rates from the Inland Waterways Authority of India (part of the Ministry of Surface Transportation of the Government of India) submitted by respondents. *See* Comment 25.

To value factory overhead, SG&A and profit for all respondents and firms, we calculated a simple average using the financial reports of the TATA Iron and Steel Company (''TATA'') and the Steel Authority of India Limited (''SAIL''). *See* Comment 3.

Verification

As provided in section 782(i) of the Act, we verified the information submitted by respondents for use in our final determination. We used standard verification procedures including examination of relevant accounting and production records and original source documents provided by the respondents.

Critical Circumstances

Section 735(a)(3) of the Act provides that, in a final determination, the Department will determine whether: (A)(i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there would be material injury by reason of such sales, and (B) there have been massive imports of the subject merchandise over a relatively short period.

1. Importer Knowledge of Dumping

In determining whether there is a reasonable basis to believe or suspect that an importer knew or should have known that the exporter was selling the plate at less than fair value, the Department normally considers margins of 15 percent or more sufficient to impute knowledge of dumping for constructed export price (CEP) sales, and margins of 25 percent or more for export price (EP) sales. *See, e.g., Preliminary Critical Circumstances Determination: Honey from the People's Republic of China (PRC)*, 60 FR at 29824 (June 6, 1995) (''*Preliminary Honey*'') and *Notice of Final Determination of Sales at Less Than Fair Value: Brake Drums and Rotors from the People's Republic of China*, 62 FR 9160 (Feb. 28, 1997) (''*Brake Drums and Rotors*'') .

Since the company specific margins for EP sales in our final determination for carbon steel plate are equal to or greater than 25 percent for Anshan, Baoshan, Shanghai Pudong and WISCO, we have imputed knowledge of dumping to importers of subject merchandise from these exporters. We found that Liaoning had margins below 25 percent. Because we found these margins to be below 25 percent, we do not impute knowledge of dumping to importers of subject merchandise reported by Liaoning. Therefore for Liaoning, we find that critical circumstances do not exist with respect to the subject merchandise.

2. Importer Knowledge of Material Injury

Pursuant to the URAA, and in conformance with the WTO Antidumping Agreement, the statute now includes a provision requiring the Department, when relying upon section 735(a)(3)(A)(ii), to determine whether the importer knew or should have known that there would be material injury by reason of the less than fair value sales. In this respect, the preliminary finding of the International Trade Commission (ITC) is instructive, especially because the general public, including importers, is deemed to have notice of that finding as published in the **Federal Register**. If the ITC finds a reasonable indication of present material injury to the relevant U.S. industry, the Department will determine that a reasonable basis exists to impute importer knowledge that there would be material injury by reason of dumped imports during the critical circumstances period—the 90-day period beginning with the initiation of the investigation. *See* 19 CFR 351.16(g). If, as in this case, the ITC preliminarily finds threat of material injury (*see Cut-to-Length Carbon Steel Plate from China, Russia, South Africa, and Ukraine*, U.S. International Trade Commission, December 1996), the Department will also consider the extent of the increase in the volume of imports of the subject merchandise during the critical circumstances period and the magnitude of the margins in determining whether a reasonable basis exists to impute knowledge that material injury was likely. As noted below, the extent of the import increase is nearly double that needed to find ''massive imports.'' Despite the fact that the ITC found only threat of injury, we find that the sheer volume of imports entering the U.S. from the PRC would have alerted importers to the fact that the U.S. industry would be injured by these dumped imports.

3. Massive Imports

When examining the volume and value of trade flow data, the Department typically compares the export volume for equal periods immediately preceding and following the filing of the petition. Pursuant to 19 CFR 353.16(f)(2), unless the imports in the comparison period have increased by at least 15 percent over the imports during the base period, we will not consider the imports to have been ''massive.'' In order to determine whether there have been massive imports of cut-to-length plate, we compared imports in the three months following the initiation of the investigation with imports in the three months preceding initiation.

In this case, imports of Chinese plate increased 29 percent in the three months following the initiation of the investigation when compared to the three months preceding initiation, or nearly two times the level of increase needed to find ''massive imports'' during the same period.

4. China-Wide Entity Results

With respect to companies subject to the China-wide rate (*i.e.*, companies which did not respond to the Department's questionnaire), we are imputing importer knowledge of dumping based on the China-wide dumping rate which is greater than 25 percent. As noted above, we have also determined that importers knew or

should have known that there would be material injury to the U.S. industry due to dumping by the China-wide entity based on the ITC's preliminary determination and the fact that imports in the comparison period are nearly twice the level for finding ''massive imports.'' In the absence of shipment data for the China-wide entity, we have determined based on the facts available, and making the adverse inference permitted under section 776(b) of the Act because this entity did not provide an adequate response to our questionnaire, that there were massive imports of certain cut-to-length carbon steel plate by companies that did not respond to the Department's questionnaire. Therefore, we determine that critical circumstances exist with regard to these companies.

5. Cooperating Respondents Results

Based on the ITC's preliminary determination of threat of injury, the massive increases in imports noted above, and the margins greater than 25 percent for Anshan, Baoshan, Shanghai Pudong and WISCO, the Department determines that critical circumstances exist for Anshan, Baoshan, Shanghai Pudong and WISCO. Because we found margins to be below 25 percent, we do not impute importer knowledge of dumping for Liaoning. Therefore for Liaoning, we find that critical circumstances do not exist with respect to the subject merchandise.

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Interested Party Comments

Comment 1: Separate Rates

Petitioners contend that the Department's preliminary decision to assign separate rates to the five respondents who submitted questionnaire responses in this case—Anshan, Baoshan, Liaoning, WISCO and Shanghai Pudong—cannot be sustained in the final determination. Petitioners note that under the Department's policy, exporters in non-market economies are entitled to separate, company-specific margins only when they can demonstrate an absence of government control over export activities, both in law and in fact. *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China,* 56 FR 20,588 (May 6, 1991) (''*Sparklers*''); *Silicon Carbide.* They assert that none of the PRC respondents has met this burden of proof, whether with respect to *de jure* or *de facto* control. Petitioners claim that the PRC government controls the steel industry.

Petitioners also claim that respondents did not fully cooperate with the Department. They note that Baoshan only submitted certain ''excerpts'' from its annual report to the Department at verification. In addition, they contend that Anshan did not provide certain reports and financial statements. Petitioners argue that this information would likely demonstrate that respondents are not entitled to a separate rate.

Respondents argue that petitioners' arguments regarding separate rates are factually and legally flawed and must be rejected.

Respondents note that in the preliminary determination, the Department determined, respondents were not subject to *de jure* or *de facto* government control. They assert that petitioners do not provide any valid arguments or evidence that would justify a reconsideration of this determination. Respondents also note the Department verified the accuracy of this information. Accordingly, they assert that the Department should affirm its finding of an absence of *de jure* and *de facto* control in the final determination and should continue to calculate a separate rate for each respondent in the final determination.

Department's Position: We agree with respondents. The Department's NME separate rates policy is based upon a rebuttable presumption that NME entities operate under government control and do not merit separate rates. This presumption can be overcome by a respondent's affirmative showing that it operates without *de jure* or *de facto* government control.

We found that the respondents have met their affirmative evidentiary burden with respect to the Department's criterion of *de jure* control, because they have provided copies of business licences and the applicable government

statute granting them the right to operate as independent companies.

We found that the respondents met the evidentiary burden with respect to *de facto* control as well. During verification, the Department examined the issue and found that information provided by respondents supported the contention that there is a *de facto* absence of government control of the export functions of the respondents. *See* Separate Rates Memorandum, October 24, 1997. Consequently, we have determined that the respondents have met the criteria for the application of separate rates.

We also disagree with petitioners' assertion that Baoshan failed to provide a complete annual report at verification. The Department examined the entire annual report at verification and included in the verification exhibits those segments applicable to the investigation. We also disagree with petitioners that Anshan did not cooperate regarding submission of certain documents; the Department never requested the documents petitioners claim Anshan refused to provide.

Comment 2: Reporting of Sales

Petitioners contend that the respondents do not appear to have reported all of their sales for export to the United States. They state that a review of the quantity and value of subject merchandise reported by the respondents during the six-month POI shows that sales of the subject merchandise were under-reported as compared to U.S. import statistics. Petitioners contend that should the Department find that any respondent that has failed to cooperate by not reporting sales of the subject merchandise for export in its questionnaire response should be deemed a non-responsive exporter and denied eligibility for consideration for a separate rate.

Respondents contend that as part of its investigation in this case, the Department has conducted a thorough examination of the sales made during the period of investigation by each of the respondents involved in this proceeding. Respondents assert that the Department's examination confirmed that the respondents have reported all of their sales properly.

Department's Position: We agree with respondents. The Department conducted verification of the sales quantity and value totals submitted by each of the respondents in the questionnaire responses and we found that all respondents properly reported sales during the POI.

Comment 3: Financial Data From Annual Reports of Indian Steel Companies

Petitioners argue that the Department should use financial data from annual reports of major steel producers in the principal surrogate country to calculate factor values for profit, SG&A and overhead. Petitioners claim that representative data that most accurately reflect the current earnings and expenditures of Indian cut-to-length plate (''CTLP'') producers can be found in recent annual reports of the two largest Indian steel plate producers: the TATA Iron and Steel Company (''TATA'') and the Steel Authority of India Limited (''SAIL''). Petitioners state that these reports closely correlate with the POI and the industry being investigated. Petitioners note that the Department used a very similar methodology in its selection of surrogate values in the concurrent investigation of imports of CTLP from the Ukraine. Petitioners state that, in its preliminary determination for both Azovstal and Ilyich, the Department calculated COM, SG&A, profit and overhead by averaging data from the annual reports of two companies in Brazil, the principal surrogate country in that case. See *Preliminary Determination of Sales at less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from the Ukraine, 62 FR at 31957, June 11, 1997.*

In contrast, petitioners claim the most recent data published in the *Reserve Bank of India Bulletin* (dated April 1995) are for 1992–1993. They argue there is no indication that any of this combined data is audited or follows Indian generally accepted accounting principles (GAAP). Finally, they state that the *Reserve Bank* data used in the preliminary determination are not specific to steel production and include an unknown number of other manufacturing and chemical companies.

Respondents agree that the use of information from Indian steel producers may be preferable to the rates obtained from the *Reserve Bank of India Bulletin.* However, respondents disagree with petitioners' suggestion that the Department should limit its analysis to SAIL and TATA when there is information on the record for six such companies: (1) TATA; (2) SAIL; (3) Pennar Steels, Inc. (''Pennar''); (4) Nippon Denro Ispat Ltd. (''Nippon Denro''); (5) Visvesvaraya Iron & Steel Ltd. (''Visvesvaraya''); and (6) Lloyds Metals and Engineers, Ltd. (''Lloyds''). Respondents agree that the Department's goal in selecting expense rates should be to use representative data that most accurately reflect the current earnings and expenditures of Indian cut-to-length plate producers. Respondents claim that ignoring two-thirds of the data that is on the record would be clearly inconsistent with the Department's goal of obtaining representative data—and would violate the Department's fundamental obligation to calculate dumping margins as fairly and accurately as possible. Respondents also dispute petitioners' claim that there is insufficient detail in SAIL's annual report to calculate an overhead rate.

Liaoning and Wuyang argue that the Department should calculate surrogate overhead costs, SG&A expenses, and profit using the actual data contained in the annual financial reports of the six Indian producers of flat-rolled steel products that are on the record in this investigation. They argue that the data contained in these six annual reports are more appropriate for calculating overhead, profit and SG&A ratios than the information from the *Reserve Bank of India Bulletin* used in the preliminary determination because the annual report financial information is specific to India's steel industry. They state that using factory-specific information also would be consistent with the approach taken by Commerce in a number of other investigations. *See Brake Drums and Rotors,* 62 FR 9160; *Melamine Institutional Dinnerware Products From the People's Republic of China,* 62 FR 1708 (January 13, 1997); *Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from the Hungarian People's Republic,* 52 FR 17428 (May 8, 1987); *Bicycles,* 61 FR 19026.

Liaoning and Wuyang also argue that the financial experience of these companies represents a broad spectrum of India's flat-rolled steel industry, and an analysis that omits certain companies (or uses only the large or only the small companies) would result in overhead, profit and SG&A ratios that are not representative of either India's or China's steel industry. For example, not all of the PRC respondents are large-scale producers like the Indian producers SAIL and TATA. Wuyang, in particular, is a small steel mill, whose annual sales are only ten percent of those of TATA, and whose size (in number of employees) is far more similar to Visvesvaraya or Nippon Denro. Moreover, they argue that Wuyang does not have a blast furnace or basic oxygen furnace. Wuyang's steelmaking relies entirely on electric arc furnaces, and Wuyang's overhead, profit and SG&A ratios are much more likely to be similar to those of Lloyds or Pennar than those of SAIL or TATA. They state that only an analysis that

includes all the Indian steel producers will result in surrogate overhead, profit and SG&A ratios that are equally representative of the surrogate experience.

Liaoning and Wuyang argue that, in calculating the ratios, Commerce should not calculate weighted-average ratios for the Indian steel producers. Rather, Commerce should calculate overall ratios using a straight average of the data contained in the six companies' financial statements. *See Bicycles from China,* 61 FR at 19039 (when using the Indian producers' annual reports to derive overhead, profit and SG&A, Commerce calculated ''a simple average of the financial statements consistent with [its] normal practice'').

Petitioners argue the Department should not rely on the data from Pennar, Nippon Denro, Visvesvaraya or Lloyds Metals at all, but instead use data from SAIL and TATA only. Petitioners state that the Department's preference is to derive its calculation of NME financial ratios from firms that are significant producers of merchandise that is identical or most similar to that produced by the respondents under investigation. *See Melamine Institutional Dinnerware Products from the People's Republic of China,* 62 FR 1708, 1712 (January 13, 1997); *Brake Drums and Brake Rotors from the People's Republic of China,* 62 FR 9160, 9167 (Feb. 28, 1997) (Final Determination) (financial data of two companies not used because there was no information indicating their production of subject merchandise during the POI); *Polyvinyl Alcohol from the People's Republic of China,* 61 FR 14057 at 14061 (March 29, 1996) (Final Determination) (''the Department seeks to base surrogate values on the industry experience closest to the product under investigation'') . Petitioners claim that TATA and SAIL are companies that produce cut-to-length carbon steel plate. By contrast, petitioners claim Pennar Steels, Nippon Denro, Visvesvaraya, and Lloyds Metals do not produce subject merchandise. Therefore, petitioners argue that, because reliable financial data is available from Indian carbon steel plate producers, consistent with its standard practice, the Department should not rely on the data of other companies that do not produce subject merchandise.

Department's Position: We agree with petitioners. It is the Department's preference to base SG&A and profit ratios on data from actual producers of subject merchandise in the surrogate country. *See Brake Drums and Rotors,* 62 FR at 9168. Of the six companies whose annual reports were submitted on the record, only SAIL and TATA actually produce cut-to-length carbon steel plate. In addition, SAIL and TATA are the only two companies whose annual reports reflect the costs of producing steel and hot-rolled coils. This is relevant as all five Chinese respondents produce coils and steel that are manufactured into plate. The Department is not using the annual report of Visvesvaraya because it is a subsidiary of SAIL and, therefore, all its financial information is already incorporated into SAIL's annual report. In addition, Visvesvaraya produced alloy and specialty steel, not cut-to-length plate. The Department is not using Pennar's annual report because Pennar buys hot-rolled coils and processes the coils into cold-rolled strips. Thus, Pennar produces neither steel nor cut-to-length plate. The Department is not using the annual report of Lloyd's Metals or Nippon because both produce sponge iron and send the iron to an affiliate where it is processed into hot-rolled coils (the affiliates' costs are not incorporated into the annual reports). The coils are then sent back to Lloyd's and Nippon, where they are processed into cold-rolled products. Thus, like Pennar, neither Lloyd's Metal nor Nippon produces steel or cut-to-length plate.

In contrast, the annual reports of both SAIL and TATA list plate as products. In addition, *Iron and Steel Works of the World,* 12th edition lists both companies as producers of plate. There does appear to be a slight discrepancy in regard to TATA. Page 49 of TATA's annual report indicates that TATA has not produced any ''plate'' since 1993. However, the physical characteristics of the ''plate'' category for the production statistics are unclear. It is possible that products that the Department considers plate could be included in the category ''sheets''. Furthermore, TATA's annual report shows significant production of both steel and hot-rolled coils.

Consequently, for the final determination, we have calculated overhead, SG&A, and profit surrogate values by using a simple average of relevant data from the annual reports of TATA and SAIL.

Comment 4: Interest Expenses Offset for Short-Term Income

Liaoning and Wuyang argue that Commerce should, when possible, offset the interest and financial expenses of Indian steel producers with their corresponding operating income. That is, when calculating SG&A, Commerce should offset interest expenses by the amount of short-term interest income. *See Brake Drums and Rotors,* 62 FR at 9168 (Department reduced interest expenses by amounts for interest income and also allocated a portion of ''other income'' as short-term interest income for those companies that did not specify a breakdown of their non-operating income); *see also Frozen Concentrated Orange Juice from Brazil; Final Results of Antidumping Duty Administrative Review,* 55 FR 26721, Comment 8 (June 29, 1990). Liaoning and Wuyang state that merely adding financial expenses to SG&A without reducing those amounts by any corresponding operating income would overstate actual net financial expenses. They claim that offsetting financial expenses against financial gains reflects more accurately the Indian producers' actual financial cost of doing business.

Petitioners argue that Liaoning is incorrect in arguing that the Department should, when possible, offset interest and financial expenses of Indian steel producers with their corresponding operating income. Petitioners argue that neither *Brake Drums and Rotors* nor *Frozen Concentrated Orange Juice from Brazil* supports offsetting financial expenses by operating income other than short-term interest earned. Petitioners state that in *Brake Drums and Rotors,* where the respondents made the same claim based on the *Orange Juice* determination, the Department offset interest expenses by the amount of short-term interest income. Petitioners cite *Brake Drums and Rotors,* in which the Department ''disagree{d} that operating income * * * should be in the offset.'' 62 FR at 9168. Petitioners claim that although the Department did offset the interest expense of certain producers by a portion of their ''other income'' or ''miscellaneous receipts,'' this was done merely as a means of allocating short-term interest costs for those producers whose financial statements did not specify a breakdown of non-operating income. Petitioners argue that interest and financial expenses may be reduced by amounts for interest income only if the surrogate producers' financial reports note that the income was short-term in nature.

Department's Position: We agree with petitioners. The Department will offset interest expense by short-term interest income only where it is clear from the financial statements that the interest income was indeed short-term in nature. *See Brake Drums at Rotors,* 62 FR at 9168. For the annual report of SAIL, the Department considered the following items of the line item ''Interest Earned'' (page 31 of SAIL's annual report) as short-term interest income: (1) loans and advances to other companies, (2) loans

and advances to customers, (3) loans and advances to employees, and (4) term deposits. Therefore, we offset SAIL's interest expense by these amounts for the final determination. For the annual report of TATA, we found that the interest expense reported (page 24 of TATA's annual report) was already net of all short-term interest income. Therefore, for the final determination, we did not further offset the interest expense.

Comment 5: Exclusion of Packing and Other Expenses From SG&A Expenses

Liaoning and Wuyang also argue that, when calculating SG&A, Commerce should exclude all expenses incurred by Indian steel producers that relate to packing, as well as all other direct selling expenses. They state that since packing and direct selling expenses are separately accounted for in the Department's dumping calculation, these expenses must be excluded to avoid double-counting. They argue that Commerce should ensure that packing and other direct selling expenses are not double-counted by excluding the categories ''other expenses'' and ''miscellaneous expenses'' in the Indian financials from the surrogate SG&A values. They cite the *Preliminary Determination of Sales at Less Than Fair Value; Brake Drums and Rotors from China,* 61 FR 53190. In that case, there was no indication from an Indian producer's financial statement used to calculate SG&A as to which line item expenses included a specific amount for packing expenses. Commerce considered packing expenses to be included in the line item labeled ''miscellaneous expenses'' since ''there appears to be no other entry under which such an expense could be included.'' Commerce therefore removed the amount for ''miscellaneous expenses'' from the SG&A calculation. *See Factor Valuation Memorandum*, Attachment 9, Shivaji Analysis, at 2. Similarly, because there was no indication from the financial statement of another producer as to which line item expenses included a specific amount for packing expenses, Commerce considered this expense to be included in the line item labeled ''other expenses,'' and removed the amount for ''other expenses'' from the SG&A calculation. *Id.*, Rico Analysis, at 2. Liaoning and Wuyang argue that in this investigation, where the Indian steel producers' financial statements do not indicate what amounts are related to packing, Commerce similarly should remove ''other expenses'' or ''miscellaneous expenses'' from the calculation of SG&A in order to avoid including an expense that is already deducted from U.S. price.

Liaoning and Wuyang also argue that Commerce should exclude from the calculation of SG&A all direct selling expenses incurred by the Indian steel producers that normally are deducted from export price and constructed export price transactions when calculating net U.S. price. They state that direct selling expenses, such as commissions, discounts, bank charges, royalties, etc., should not be included in normal value as part of the surrogate SG&A ratio because they are deducted from U.S. price. They claim that Commerce cannot make a fair comparison of normal value to export price and constructed export price if it includes direct selling expenses in SG&A in the normal value calculation, but deducts such expenses from EP and CEP. *See Torrington Co.* v. *United States,* 66 F.3d 1347, 1352 (Fed. Cir. 1995) (the antidumping statute requires an ''apples to apples'' comparison). They argue that to ensure a fair comparison, Commerce therefore should calculate an amount for SG&A that is net of all direct selling expenses.

Petitioners argue there is no basis for Liaoning's claim that costs related to packing would be included in either a ''miscellaneous expense'' of ''other expense'' category. To the contrary, petitioners argue that most steel companies pack their merchandise at the production site; thus, the labor and materials associated with packing, if there are any, will be included in cost of manufacturing, not in SG&A. Petitioners argue that for those companies that pack merchandise at a separate facility and assign the costs to SG&A, packing is usually specified as a discrete item.

Petitioners argue that even if some companies were to include packing in a miscellaneous or catch-all expense category, it is clear the packing would be just one of numerous expenses. Petitioners claim it would therefore be inappropriate—indeed distortive—to deduct the entire amount of the reported miscellaneous or other expense, as respondents suggests.

Petitioners suggest that respondents' reliance on the preliminary determination in *Brake Drums and Rotors* is misplaced. Petitioners claim for its preliminary determination, the Department removed the amount for ''other expenses'' for the Indian producer RICO to account for packing expenses. *Brake Drums and Rotors,* 61 FR 53190 at 53197 (October 10, 1996). Petitioners state that in the final determination, however, the Department reversed itself. Petitioners state that the Department expressly included RICO's ''other expenses'' in its SG&A calculations.

Petitioners argue that the Department should reject respondents' argument that all direct selling expenses should be excluded from its surrogate SG&A calculation. Petitioners argue that the purpose of the calculation of the SG&A of the Indian producer is to determine the ratio of selling, general and administrative expense to the cost of manufacture. Petitioners argue that all expenses incident to selling, general and administrative functions of the company should be part of the SG&A calculation.

Even if the Department should decide to exclude direct selling expenses, petitioners argue, respondents' classification of such expense is overly broad. Petitioners argue that there is no evidence that the suggested exclusions were directly related to specific sales. Petitioners argue that because the Department has no information on the specific amount of direct selling expenses incurred by surrogate country producers, the Department should decline to make an item-by-item evaluation of the Indian companies' SG&A components. *See Oscillating Fans and Ceiling Fans from the People's Republic of China* (''*Oscillating Fans*''), 56 FR 55271 at 55276 (Oct. 25, 1991) (Final Determination); *Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from the Socialist Republic of Romania,* 52 FR 17433, 17436 (May 8, 1987) (Final Determination). Petitioners argue that since there is no indication whether (or how much of) such purported expenses are directly related to specific sales, the Department should reject respondents' claim that ''direct selling'' expenses should be excluded from the surrogate SG&A ratios.

Department's Position: We agree with respondents that packing expenses should be excluded from the SG&A surrogate value to the extent possible. However, we disagree that all ''other expenses'' and ''miscellaneous expense'' categories should be excluded to prevent double-counting from occurring. If there is a line in an Indian producer's financial statement for packing expenses, then the Department should not include it in SG&A. However, for both SAIL and TATA there is no specific line item limited to packing expenses. As petitioners state, it would be unreasonable and distortive for the Department to exclude all ''other'' or ''miscellaneous'' expenses just because they might contain packing expenses. These categories are undoubtedly made up of many expenses and may not include packing expenses

at all. It is possible, as petitioners suggest, that these companies included packing expenses in their raw material costs.

We note that the fact pattern in this investigation differs from *Brake Drums and Rotors.* We found that the ''other'' and ''miscellaneous'' categories listed in SAIL's and TATA's annual reports are too large to throw out simply because they might contain packing. Our examination of TATA's other expenses (page 26 of TATA's annual report) shows that it includes items such as provision for proportionate premium on redemption of non-convertible debentures, expenses of issue of rights shares, loss on discarded assets, provision for diminution in value of investments and exchange differences. We find that there is no indication that the other expenses category includes packing. Our examination of SAIL's annual report indicates that there is no explanation of the miscellaneous category other than that it includes a donation (page 36 of SAIL's annual report).

In regard to direct selling expenses, we agree in part with respondents. We note that in this investigation, all U.S. sales were EP sales. Therefore, we have not included, in our calculation of SG&A and overhead, items for which we made adjustments to U.S. price (*i.e.,* movement expenses). However, we do not agree with respondents that items such as commissions, export sales expenses, insurance, and royalties should be excluded from our calculation of SG&A and overhead. All of these factors contribute to the SG&A and overhead ratios of Indian steel producers; therefore these items (*i.e.,* commissions, export sales expenses, insurance, and royalties) have been included in our SG&A calculations for the final determination. However, we have not included, in our calculations of SG&A and overhead values, items for which we made adjustments to U.S. price. To the extent possible, we only deducted from U.S. price such items such as movement expenses. For all five respondents, we deducted brokerage and handling from U.S. price. In addition, we deducted from U.S. price, insurance related to export sales for two respondents.

Respondents claim we should exclude commissions, export sales expense, insurance, and royalty and ''cess'' as direct selling expenses for SAIL. Likewise, they claim we should exclude royalty, insurance charges, and commission/discounts as direct selling expenses for TATA. We disagree with respondents' arguments. Because we did not exclude such expenses from U.S. price, we are including them in SG&A.

Comment 6: Exclusion of Taxes From Overhead and SG&A

Liaoning and Wuyang also argue that the Department should not include in its calculation of the overhead and SG&A ratios the expenses incurred by Indian producers of steel that relate to taxes paid to governmental authorities. They state that, in past cases, the Department's practice has been to construct a value for the subject merchandise as if it were manufactured by a producer in the surrogate country for export. *Pencils from the People's Republic of China,* 59 FR at 55625 (Nov. 8, 1994). Hence, they argue, in constructing values based on Indian domestic prices, the Department must eliminate excise duties, levies, and sales taxes from those prices, as these items are rebated upon export from India. *See Brake Drums and Rotors,* 62 FR at 9163. In addition, they state that the Department has expressed a clear preference for PAI that is tax exclusive. *See Disposable Lighters from the PRC,* 59 FR at 64191, 64914 (Dec. 13, 1994); *Sebacic Acid from the PRC,* 59 FR at 28053 (May 31, 1994). Therefore, they argue Commerce should remove from the surrogate overhead and SG&A calculation any excise duty listed in the financial reports. *Brake Drums and Rotors,* 62 FR at 9164.

Department's Position: We agree in part with respondents. We have deducted all excise duties from our calculation of SG&A. However, we have not excluded the line ''rates and taxes'' from our calculations. These taxes represent the taxes and licenses, property taxes and other miscellaneous taxes that Indian steel producers incur in the normal course of business and, thus, should be a part of our SG&A surrogate value.

Comment 7: Adjustment of Surrogate Overhead Rate

Respondents state that in the preliminary determination, the Department adjusted the surrogate overhead rate for all Chinese respondents who reported any workers as performing overhead or SG&A functions that were not specifically tied to the production of subject merchandise. Respondents argue that this adjustment was unnecessary because (1) the surrogate overhead rate used by the Department in the preliminary determination included overhead and SG&A labor and (2) the Chinese respondents in this investigation properly allocated labor between direct labor, indirect labor, factory overhead labor, and SG&A labor.

Respondents argue that the labor adjustment made in the preliminary determination arbitrarily and unfairly reclassified all workers working in plants involved in the production of subject merchandise as direct production workers, regardless of the tasks performed. Respondents claim this unfairly penalized Chinese respondents for following normal Departmental practice and excluding hours worked by overhead and SG&A workers from the hours reported for production of subject merchandise. Respondents argue that as a matter of principle and established practice, the Department recognizes (1) that some functions performed by workers are properly classifiable as factory overhead or SG&A functions and (2) that the Department's normal value calculations in non-market economy cases should include only workers involved in the production of subject merchandise—workers performing overhead and SG&A tasks are not to be included. See *Carbon Steel Butt-Weld Pipe Fittings from the People's Republic of China,* 57 FR at 21058, 21064 (May 18, 1992) (direct labor hours for factory level administrators and workshop level supervisors found to be factory overhead and SG&A, respectively); *Furfuryl Alcohol,* 60 FR at 22544, 22548 (''Since our surrogate value for factory overhead includes indirect labor and it is the Department's practice to only include the production labor related to the subject merchandise, we have revised our final calculations on labor to avoid double counting labor.''). Respondents argue that the reason overhead workers and SG&A workers should not be included in the Department's calculations is that the costs of such workers are already reflected in the surrogate overhead and SG&A rates applied by the Department to the direct production costs incurred by the non-market economy producers.

Respondents claim that they undertook an analysis of the workers employed in the facilities involved in the production of subject merchandise and attempted to classify workers in a manner consistent with the Department's request for information and the Department's practice. Respondents state that in the questionnaires issued by the Department in this investigation, the Department required Chinese respondents to report labor hours for ''direct, skilled workers,'' ''direct, unskilled workers,'' and ''indirect workers''—yet never provided specific (or even illustrative) instructions regarding how such workers should be

identified. They also claim the Department never provided any guidance regarding how ''indirect'' workers were to be distinguished from ''factory overhead'' workers or SG&A workers. Respondents state that they disclosed in their responses the rules applied by each respondent for classifying workers, as well as a substantial amount of information regarding the tasks performed by workers in the production facilities. Respondents argue that, under these classification methodologies, the dominant characteristic of workers classified as ''factory overhead'' workers is that these workers were responsible for the maintenance of the facilities. They also argue the dominant characteristic of SG&A workers is that they performed relatively high-level, supervisory or administrative functions within the facilities and were not physically involved in the production process.

Respondents claim that neither the Department nor the petitioners have objected to the classification methodologies used by the Chinese respondents to distinguish between direct, indirect, factory overhead, and SG&A workers. They also claim that neither the Department nor the petitioners have proposed any modifications or alternatives to the methodologies used by the respondents to classify labor. Respondents claim that, in light of these circumstances, it is fair to conclude that the rules used by the respondents to classify labor are reasonable. Respondents claim, in other words, that they were correct in classifying maintenance workers as factory overhead workers and in classifying supervisors and administrators as SG&A workers and in excluding such workers from their reported labor hours, (*i.e.*, labor outside SG&A and overhead Therefore, respondents argue that any re-classification of workers is unnecessary.

In addition, respondents argue that the Indian surrogate values for factory overhead and SG&A rate reflect the labor cost of maintenance and administration. Accordingly, they claim there is no reasonable justification for ''adjusting'' (*i.e.*, inflating) such rates to account for maintenance workers and administrative personnel—since such an adjustment would double-count labor expenses.

Liaoning and Wuyang reiterate that the Department should not, in the final determination, make an adjustment to increase the surrogate overhead value for Wuyang to account for labor resources dedicated to overhead. They state that in its reported production expense factors, Wuyang excluded from its ''labor'' calculation certain workers because of the Department's policy for calculating overhead and SG&A in non-market economy investigations. They argue that these workers can be divided into three categories according to the relationship of their activities to the subject merchandise: (1) activities entirely unrelated to steel plate, in particular the activities of the automation research and development division, which performs research and development related to the company's consulting services in the field of industrial automation; (2) activities generally related to all products and services (for example, the personnel department); and (3) activities generally related to steelmaking, in particular the activities of the steel research and development division. They argue with respect to category (3), to Liaoning and Wuyang's knowledge the Department has never included R&D in the factors of production because doing so would almost certainly double-count R&D included in the surrogate values for factory overhead and SG&A. *See, e.g., Oscillating Fans,* 56 FR at 55271 (Commerce Department agreed with Respondent that product development and manufacturing liaison costs are not direct manufacturing costs to be included in the factors of production and that these costs are properly valued using surrogate country data for factory overhead). They state that because surrogate overhead and SG&A values already include R&D expenses, the overhead value would double-count R&D if the Department were to include Wuyang's R&D labor in the factors of production. They also argue that the Department has established an explicit policy in NME cases of not adjusting the surrogate values for R&D expenses under any circumstances. In *Chrome-Plated Lug Nuts from China*, for example, a respondent requested the Department to exclude R&D expenses from the surrogate value for factory overhead on the ground that the respondent did not actually incur R&D expenses. They claim that the Department refused to exclude the R&D, citing the Department's policy not to make an ''item-by-item evaluation of overhead components.'' 61 FR at 58514, 58517 (November 15, 1996), *citing Pure Magnesium and Alloy Magnesium from the Russian Federation,* 60 FR 16440 (March 30, 1995) and *Tapered Roller Bearings from Hungary*, 52 FR at 17428 (May 8, 1987). They state that the Department reiterated this policy in *Heavy Forged Hand Tools from China*, 61 FR 46443 (September 3, 1996), when the Department refused to deduct R&D expenses from surrogate overhead values based on data published in the April 1995 *Bulletin of the Reserve Bank of India,* the same source upon which petitioners relied in their petition to calculate factory overhead.

Liaoning and Wuyang conclude that given the nature of the overhead and SG&A activities described above and the Department's established policy in NME cases, Commerce should not reallocate any of Wuyang's overhead labor to the labor valued directly based on factors of production. In the alternative, they argue that if Commerce does adjust the surrogate overhead value to account for ''additional labor,'' however, then Commerce also should (1) make all necessary corresponding adjustments to Wuyang's energy consumption factors, because Wuyang allocated its energy consumption based on its reported labor hours; and (2) exclude ''other manufacturing expenses,'' ''other expenses,'' and ''miscellaneous expenses'' from the surrogate overhead and SG&A values to avoid double counting labor expenses.

Petitioners state that this issue is not relevant to the final determination unless the Department again chooses to rely on a source for the surrogate value for overhead that does not include labor, such as the *Bulletin of the Reserve Bank of India* data. However if this is the case, petitioners argue the Department should make an adjustment along the same lines as the one made in the preliminary determination because the Department's methodology is sound.

Petitioners claim that respondents' criticism of the Department's approach rests on several false premises: (a) that the values from the *Reserve Bank of India Bulletin* already included labor; (b) that overhead and SG&A workers are not to be included in the Department's calculations; (c) that the Department's labor adjustment to overhead arbitrarily and unfairly reclassified all workers working in plants involved in the production of subject merchandise as direct production workers, regardless of the tasks performed; and (d) that the Department would have acted differently had it understood that not all respondents had allocated a majority of their workers to overhead and SG&A.

Petitioners also argue that normal value in NME cases always includes a component for overhead and SG&A. Petitioners state that respondents do not seem to disagree in principle with the notion that the labor associated with overhead belongs in the surrogate value for overhead. Petitioners argue that it then becomes a factual question of

whether such labor is, or is not, included in the surrogate data. Petitioners argue that labor is not included in the surrogate overhead value calculated from the *Reserve Bank of India Bulletin*.

Finally, petitioners argue, respondents are wrong in focusing on the Department's statement in the preliminary determination that respondents allocated a majority of the labor employed in their facilities to overhead and selling and general administrative tasks. Petitioners argue it is plain from the preliminary calculation memoranda that the Department's decision to adjust overhead for labor was not dependent on a respondent allocating a ''majority'' of its workers to overhead and SG&A.

Petitioners argue that respondents have presented no cognizable basis for challenging the Department's practice of adjusting the surrogate overhead value for labor where such value does not already include overhead labor. Petitioners state that if, in the final determination, the Department uses a surrogate overhead value other than the value derived from the *Reserve Bank of India Bulletin*, and if that alternative value likewise does not include all overhead labor, a similar adjustment should be made.

Department's Position: Because the Department is now using a simple average of the annual reports of SAIL and TATA, rather than the *Reserve Bank of India Bulletin*, to calculate our surrogate overhead and SG&A values the question of whether or not the data in that publication included overhead labor is now moot. We agree with petitioners that to the extent that our new surrogates do not include overhead or SG&A labor, adjustments to these values are appropriate.

SAIL's annual report explicitly states that ''employee remuneration and benefits'' are not included in the overhead category ''repairs and maintenance.'' Nor is there any indication that ''employee remuneration and benefits'' would be included in the following overhead categories: ''stores and spares,'' ''joint plant committee,'' ''insurance,'' ''rent,'' ''royalty and cess,'' ''cash discount,'' ''conversion charges,'' or ''water charges.'' However, ''handling expenses,'' which is broken down into handling of raw materials, finished goods, and scrap recovery, would appear to consist entirely of overhead labor. In addition, there are SG&A categories that appear to account for SG&A labor, such as, ''directors fee,'' ''remuneration to auditors,'' ''cost audit fee,'' and ''miscellaneous.'' It is also likely that the following SG&A categories contain some labor: ''export sales expense,'' ''security expenses,'' ''traveling expenses,'' ''training expenses.'' Therefore it appears that the surrogate overhead and SG&A values calculated from SAIL's annual report contain overhead and SG&A labor.

TATA's annual report also explicitly states that overhead items ''stores consumed,'' ''repairs to buildings,'' ''repairs to machinery,'' and ''relining expenses'' exclude amounts charged to wages and salaries. There is no indication that the other overhead categories, ''rents,'' ''royalty,'' ''insurance charges,'' ''joint plant committee funds,'' ''conversion charges,'' and ''depreciation'' include overhead labor. TATA's material handling charges appear to be included with freight charges in the category ''freight and handling charges'' which we allocated to COM as they are part of TATA's cost. We have no way of determining how much of this figure should be allocated to handling charges, and thus, to overhead. Therefore, we are including the entire amount in COM. With regards to SG&A labor, the annual report indicates that managerial remuneration is included in the SG&A category ''other expenses.'' Therefore, it appears that the surrogate overhead and SG&A values calculated from TATA's annual report contain SG&A labor, however, it is inconclusive whether or not it contains overhead labor.

As stated above, the Department's surrogate SG&A and overhead values are based on a simple average of the values calculated from the annual reports of TATA and SAIL. Therefore, since both the annual reports clearly contain SG&A labor, it is not necessary for the Department to make an adjustment to our SG&A surrogate value to account for SG&A labor.

As mentioned above, the overhead surrogate value calculated from SAIL's annual report does contain overhead labor, however it is inconclusive whether the overhead surrogate value calculated from TATA's annual report contains overhead labor. Therefore, our simple average of the two contains some overhead labor but it is not clear whether it contains sufficient overhead labor. To ensure that no double counting occurs, the Department is faced with the options of (1) excluding from its calculation of overhead all SAIL and TATA income statement line items that might include overhead labor and making a similar overhead adjustment as in the preliminary determination (in the preliminary determination, the Department adjusted the overhead surrogate value using ratios developed from respondents reported overhead and direct workers), or (2) leaving the overhead surrogate as calculated and not making the overhead labor adjustment. The Department considers it more reasonable to leave the overhead surrogate as calculated. The Department fears that excluding all categories that might include overhead labor would unfairly exclude many costs that should be included in our overhead surrogate. Therefore, given the Department's new surrogate values for SG&A and overhead, we did not make any adjustments for overhead or SG&A labor in the final determination.

Comment 8: Overhead Energy Adjustment

Respondents argue that the Department's overhead energy adjustment was unnecessary and improper in the context of this investigation, because (1) virtually all energy used by the Chinese respondents is already included in the Department's normal value calculation, and (2) the calculation used by the Department bears no relationship to any reasonable ''overhead energy'' costs incurred in the production of subject merchandise. Respondents state that the only energy inputs treated as overhead by the Department were water, compressed or forced air, and steam. Respondents claim that each of the overhead energy items is relatively inexpensive so the overall cost of ''overhead energy'' is negligible. They argue no adjustment is necessary in the final determination.

Respondents argue that the adjustment used by the Department in the preliminary determination was arbitrary and improper. They claim the costs calculated using this methodology bear no relationship to any reasonable cost of overhead energy. They contend that the purpose of the overhead energy adjustment made in the preliminary determination was to include a portion of overhead that was apparently missing from our selected surrogate. The *Reserve Bank of India Bulletin* overhead data does not contain any items that would lead the Department to believe that overhead energy was accounted for. They claim there is no reasonable basis to believe the adjustment used by the Department would provide a reasonable estimate of the costs of providing water, steam, and compressed air to the steel production facilities of the Chinese respondents and therefore should not be used in the final determination.

Petitioners argue that, had the Department not made some kind of adjustment for the omission of power and fuel from the overhead calculation, it would have improperly ignored respondents' overhead energy costs.

Petitioners argue there is no support on the record for respondents' belated claim that these costs are ''negligible'', because they have not been reported. Petitioners state that the point of the adjustment is to develop a reasonable estimate of the overhead energy costs of producers of plate in the surrogate country. Petitioners do agree that the methodology used by the Department is arbitrary, but the solution proposed by respondents (*i.e.*, ignoring the issue altogether) is not adequate. Instead, petitioners claim if the Department continues to use data from the *Reserve Bank of India Bulletin* for overhead, the energy adjustment should be accomplished by other means. Because the record data from Indian sources does not allow the Department to precisely distinguish overhead energy from direct energy inputs used in the steel industry, petitioners argue the Department should develop a ratio from the cost accounting data provided by Geneva Steel in the petition. Consistent with the usual cost accounting practices of the steel industry, petitioners argue the petition separately sets forth direct energy inputs and overhead energy consumption. From this information, petitioners suggest the Department can determine the ratio of Geneva's overhead energy costs to direct energy costs. Petitioners argue that the surrogate value for overhead should be increased by an amount equal to the above ratio times the individual respondent's total surrogate costs for direct inputs of fuels, utilities, and gases.

Petitioners point out that, like the adjustment to overhead for additional labor, the overhead energy adjustment is largely a function of the Department's choice of the source for the overhead surrogate value. Petitioners argue that regardless of the Department's choice of overhead surrogate value in the final determination, it should carefully examine whether overhead energy is included; if it is not, the Department should make an overhead energy adjustment similar to the one just described.

Department's Position: We agree with petitioners that this issue is tied to the Department's choice of the source for the overhead surrogate value. As discussed above, we have chosen a simple average of the annual reports of SAIL and TATA as the source for the overhead surrogate value. We then examined whether overhead energy was included in the overhead values reported in those reports. Using a methodology similar to that used in the preliminary determination, we excluded the categories ''power and fuel,'' ''fuel oil consumed,'' and ''purchase of power'' from our value for overhead since we are valuing these items as direct inputs. For SAIL, we included in our overhead calculation the item ''water charges'' since the Department normally treats water as an overhead expense. In addition, we consider it likely that additional overhead energy is included in the overhead item ''stores and spares.'' We allocated the item ''stores and spares'' to overhead. For TATA, there is no item that is entirely comprised of overhead energy. However, we consider it likely that some overhead energy is included in the overhead item ''stores and spares.''

As with our calculation of overhead labor described in Comment 7, the simple average of SAIL's and TATA's calculated overhead values contains some overhead energy but it is not clear whether it contains sufficient overhead energy. To ensure that no double counting occurs, the Department is faced with the options of (1) excluding from its calculation of overhead all SAIL and TATA income statement line items that might contain overhead energy and making an appropriate overhead energy adjustment, or (2) leaving the surrogate overhead value as calculated and not making an adjustment for overhead energy. The Department considers it more reasonable to leave the overhead surrogate as calculated. As with labor, the Department fears that excluding all categories that might include overhead energy would unfairly exclude many costs that should be included in our overhead surrogate. Therefore, given the Department's new surrogate value for overhead, we did not make any adjustment for overhead energy in the final determination.

Comment 9: Credit for By-Products

Respondents argue the Department must credit respondents' cost of manufacture for by-products before applying the factory overhead rate in the final determination. They argue that in the preliminary determination, the Department treated costs and credits asymmetrically by deducting by-products from the cost of manufacture after applying the factory overhead rate and without including factory overhead in its calculations of by-product credits.

Department's Position: We agree with respondents. In calculating the cost of manufacture, the Department uses a net material amount that we derive by deducting the by-products from gross materials. Therefore, we credit by-products before we calculate the cost of manufacture and overhead.

Comment 10: Treatment of Gases

Respondents argue that the Department should treat industrial gases as overhead for the final results. Respondents argue that, in deciding whether to treat industrial gases as overhead or direct material inputs, the fundamental issue is how such materials are treated by Indian steel producers. Respondents state that if the standard practice for Indian firms is to treat industrial gases as overhead, then those values must already be included in the surrogate value for factory overhead that the Department is using. Respondents claim that, if this is the case, including industrial gases as a direct input as well as in overhead would result in double-counting.

Respondents argue that a review of the financial information of Indian steel producers on the record reveals that the standard practice for Indian steel companies is to include industrial gases as part of factory overhead. Respondents claim that none of the annual reports of Indian steel companies provided in this investigation treated industrial gases as either a material input or an energy source. Thus, respondents argue, including the cost of those gases as a direct input in the final calculations would double-count those costs.

Petitioners argue that industrial gases used in iron and steel making should be treated as direct energy inputs, and not as overhead. Petitioners state that unless a gas is used specifically for overhead energy (*e.g.*, to heat a facility) it should not be characterized as overhead. Petitioners argue that gases such as oxygen are important inputs in the steel making process, serving both as refining agents and as an energy source. Petitioners argue that valuing these gases as direct inputs would not result in double-counting as respondents claim. Petitioners state that worksheets provided by the Department in its Factor Valuation Memorandum show that these energy inputs are not included in factory overhead (Commerce specifically excluded ''power and fuel'' expenses before it calculated the overhead rate for the preliminary determination). Accordingly, petitioners argue there is no double counting.

Petitioners argue that the respondents' contention that the standard practice for Indian steel companies is to include these energy inputs as part of factory overhead is incorrect. Petitioners claim that respondents' statement that ''none of the annual reports * * * treated industrial gases as either a material input or an energy source'' is incorrect. Petitioners argue that the listing for

''Others'' in the power and fuel cost of SAIL most likely includes industrial gases. Petitioners argue that neither SAIL's annual report nor TATA's provides any information which supports respondents' contention that industrial gas inputs should be included in factory overhead.

Petitioners state that Indian accounting practices actually require that energy inputs be treated as direct inputs. They argue that in *Brake Drums and Rotors,* the Department found that, under Indian GAAP, inputs may be treated as factory overhead only if they are not consumed in the production process. *See* 62 FR at 9160, 9169 (citing the *Compendium of Statements and Standards* published by the Institute of Chartered Accountants of India). Petitioners argue that in this case there can be no dispute that these energy inputs are consumed in the production process. Accordingly, petitioners argue that respondents' arguments regarding the inclusion of energy inputs in factory overhead should be rejected.

Department's Position: We agree with petitioners. There is no indication in the annual reports of SAIL and TATA that they treat industrial gases as overhead energy costs. We have therefore valued these gases as direct inputs and excluded the line items ''power and fuel,'' ''fuel oil consumed,'' and ''purchase of power'' from our overhead calculations to ensure that no double counting of these costs occurs.

Comment 11: Valuation of Self-Produced Inputs

Respondents argue the Department's primary goal and responsibility in selecting surrogate values in investigations involving producers in a non-market economy (NME) is to determine—as accurately, fairly, and predictably as possible—the costs that would have been incurred in producing the subject merchandise if the costs of such production had been determined by market forces. *See Oscillating Fans,* 56 FR at 55271, 55275, cited with approval in *Lasko,* 43 F.3d at 1442. To do so, the Department requires respondents to report the actual inputs they use in the production of the subject merchandise, and then values those inputs at the price for those inputs in a comparable market economy. In this case, the Department is calculating a normal value for steel plate based on the actual inputs used by the Chinese producers to manufacture steel plate and the values for those inputs primarily in India.

Respondents claim that the same rationale that leads the Department to calculate normal value for steel plate based on the actual factors of production also requires that it use a similar methodology for self-produced inputs (such as oxygen, nitrogen, argon and similar gases) '' at least when the necessary information is available on the record. In this case, respondents argue the Department does have verified information on the actual inputs used to produce the oxygen, nitrogen, argon and similar gases that are used in steel plate production by Anshan, Baoshan, Shanghai Pudong and WISCO. Respondents argue the Department should therefore calculate the value for those gases based on the actual inputs.

Respondents state that in the preliminary determination, the Department ignored the actual inputs used to make these gases, and instead valued these gases based on price quotations for such gases in India. Respondents claim such an approach would be appropriate only if the Department were to assume that it is more accurate to use the prices in India for those gases than to build up the values for those gases from the actual inputs used to produce them. Respondents claim that assumption is flatly inconsistent with the entire methodology used in non-market-economy cases, and cannot be correct. Respondents argue that, if previous assumption were correct, then it would follow that Commerce should value steel plate based on price quotations from Indian suppliers rather than to build up a normal value based on the actual factors of production used in manufacturing steel plate.

Petitioners argue that the values assigned to industrial gases used by respondents should be based on Indian surrogate values and not respondents' factors of production for these gases. Petitioners claim that the respondents' factors of production cannot be used by the Department because they are inherently unreliable. Petitioners argue that it is only where the Department can determine that a non-market economy producer's input prices are reliable that accuracy, fairness and predictability are enhanced by using those input prices. *See Oscillating Fans,* 56 FR at 55271 and 55274–75.

Petitioners claim that respondents used the Department's August 18, 1997 request for spreadsheets used in calculating the factors of production as a chance to cure existing deficits in the record regarding respondents' industrial gas production by submitting complete factor of production data for ''certain'' gases. Petitioners claim it would be unfair for the Department to use this mostly unverified data to calculate factors of production for industrial gases because petitioners have not been afforded the opportunity to comment on these data and the Department did not have ample opportunity to consider whether to verify the data pertaining to industrial gases.

Petitioners argue that respondents did not, as they contend, submit complete factor information for the industrial gases used in the steelmaking processes in their questionnaires or supplemental questionnaires. Petitioners claim that the cites to questionnaire and supplemental questionnaire responses did not adequately identify the data necessary to sustain respondents' contention that they produce all of the industrial gases they use. Petitioners also argue that the Department's findings at verification regarding gas usage and production by respondents further calls into question the reliability of respondents' industrial gas production factor information. In addition, petitioners argue that respondents have not put any information on the record regarding the ownership of their gas plants. For these reasons, petitioners argue that the respondents' factors of production for these gases are unreliable and should not be used for the final determination.

Department's Position: We agree that, for some respondents, the value of the subject merchandise in this case is more accurately measured if the self-produced gases are valued based on the actual inputs used to make these gases.

In NME cases, the Department selects the surrogate values that reflect best the costs that would have been incurred in producing the subject merchandise if the costs of such production had been determined by market forces. It is the Department's practice to collect data on all direct inputs actually used to produce the subject merchandise, including any indirect inputs used in the in-house production of any direct input.

To accurately value all direct and indirect inputs, the Department requires sufficient time to analyze usage rates and select appropriate surrogate values. It is also important that interested parties have the opportunity to comment on the reported usage rate and surrogate value proposed by the Department. For these reasons, it is important that the Department receives the respondents in a timely manner. In the instant case, although WISCO claimed that the inputs for the production of this gas were reported in its April 14, 1997 submission, the actual information was not submitted until seven days before the verification. The later submission was untimely because the Department had specifically

requested that information and provided a deadline which was more than two months earlier. The fact that this information was verified does not commit the Department to consider it timely in its final determination.

Similarly, Baoshan's April 14, 1997 supplemental response claimed to have reported the inputs used in self-producing a certain gas, but the actual data were absent from the specified appendix. Baoshan claims that data on this gas and its material inputs can be found in a different appendix and this information was verified. However, that appendix responds to the Department's question on energy consumption and contained a Baoshan Energy Department report for only the month of July. Furthermore, no labor factors involved in the self-production of oxygen are included on the worksheet. The Energy Department report was later verified for the integrity of the reported energy consumption rather than for production of this gas. Not until Baoshan's August 21, 1997 submission, which reached the Department after verification, did Baoshan provide, in a usable format, the complete factors for the gas it self-produces.

The Department is rejecting WISCO and Baoshan's production data for their self-produced gases due to untimeliness and lack of consistency. For WISCO and Baoshan, therefore, we are continuing to use the Indian surrogate values that were used for the preliminary determination for their self-produced gases.

Anshan reported gases which were self-produced and their production inputs. Shanghai Pudong reported three factors as being as self-produced and provided their inputs. For these two respondents, the Department used their reported production inputs for valuing the factors for producing the subject merchandise.

We disagree with the petitioner's claim that the verification of the self-produced gases showed them to be unreliable for Anshan and Shanghai Pudong. These data were submitted on the record in a timely fashion and were verified. The verification report contains no mention of discrepancies in these data.

Comment 12: Domestic Inland Freight Expenses

Liaoning and Wuyang maintain that if the Department uses Indian *Monthly Statistics* to derive surrogate values for raw material inputs, it should not add to these costs an extra amount for domestic inland freight expenses. Respondent argues that in *Sigma Corporation* v. the *United States*, 117 F.3d 1401 (Fed. Cir. July 7, 1997) (''*Sigma*''), the U.S. Court of Appeals for the Federal Circuit (''CAFC'') ruled that to do so would overstate the value of the freight component of normal value. In making its decision, they argue, the Court determined that the Department's methodology of adding a constructive freight charge on top of the import prices double counted a substantial component of the total freight expense. These respondents conclude that the Court's holding in *Sigma* is applicable to this case, and if the Department uses Indian *Monthly Statistics* to derive surrogate values for raw material inputs, it should not add a constructive freight charge on top of these prices for the shipment of such raw materials from Chinese suppliers to the respondents in this investigation.

Petitioners argue that, in *Sigma*, the CAFC did not preclude the Department from making an adjustment to account for domestic freight. Petitioners argue that, to the contrary, the Court expressly determined that the Department must devise an appropriate methodology to account for the freight component without double counting. Petitioners add that it is obvious that, depending on distances and modes of transportation, the domestic freight expense to transport an input from a supplier in China to the producer of the subject merchandise can be considerably greater than the freight included in the Indian *Monthly Statistics*. Petitioners maintains that, as the *Sigma* Court recognized, the Department had a statutory duty to select a methodology that produces ''reasonably accurately estimates of the true value of the factors of production.'' Petitioners conclude that this includes a proper accounting of the domestic inland freight and that, accordingly, the Department should devise an appropriate methodology to account for the freight charges from the Chinese suppliers of the input to Wuyang's factory without double counting.

Department's Position: We agree with petitioners and, in part, with respondents. The CAFC's decision in *Sigma* requires that we revise our calculation of source-to-factory surrogate freight for those material inputs that are valued on CIF import values in the surrogate country. The *Sigma* decision states that the Department should not use a methodology that assumes import prices do not have freight included and thus values the freight cost based on the full distance from domestic supplier to producer in all cases. Accordingly, as in the *Notice of Final Determination of Sales at Less Than Fair Value: Collated Roofing Nails from the People's Republic of China*, 62 FR at 51410 (October 1, 1997) (''*Nails*''), we have added to CIF surrogate values from India a surrogate freight cost using the shorter of the reported distances from either the closest PRC port of export to the factory, or from the domestic supplier to the factory. Where the same input is sourced by the same producer from more than one source, we used the shorter of the reported distances for each supplier.

Comment 13: Regression Based Analysis

Some respondents argue that the Department should use its regression-based analysis to value labor. Respondents argue that the Department's current policy, as stated in its revised regulations, is to use a regression-based wage rate, in order to achieve a fairer, more accurate, and more predictable result. Respondents state that as the Department explained in the commentary accompanying its revised regulations: ''[B]y combining data from more than one country, the regression-based approach will yield a more accurate result. It also is fairer, because the valuation of labor will not vary depending on which country the Department selects as the economically comparable surrogate economy. Finally, the results of the regression analysis are available to all parties, thus making the labor value in all NME cases entirely predictable.'' *See Antidumping Duties, Countervailing Duties*, 62 FR 27296, 27367 (May 19, 1997) (final rule).

Respondents argue that the Department has stated that these revised regulations ''serve as a restatement of the Department's interpretation of the requirements of the [Tariff] Act as amended by the URAA,'' even in cases which are not directly governed by the new regulations. *See* 19 CFR § 351.701. Thus, respondents argue the new wage rate methodology set forth in the revised regulations (and in the Department's June 2, 1997, Policy Memorandum) should be applied in this case.

Petitioners argue the Department should reject the suggestion that labor inputs should be valued using the new regression-based methodology described in the *Final Rule*. Petitioners claim that: (1) unless the regression model is limited to data from surrogate countries that are at a level of economic development similar to China's, the new labor valuation methodology set forth in 19 CFR § 351.701(c)(3) is contrary to section 773(c)(4) of the Act, 19 U.S.C. 1677b(c)(4), (2) it fails to account adequately for labor costs other than wages, (3) by its own terms, the new regulation does not apply to this investigation, (4) it has not been the

Department's practice to use the regression methodology in NME cases initiated prior to the effective date of the new regulations; and (5) the new regression model has not yet been published in accordance with the requirements of the Administrative Procedure Act.

Petitioners also urge the Department not to use the labor cost methodology used in the preliminary determination. Petitioners state that, in the preliminary determination, the Department applied a single labor rate for the three levels of labor (skilled, unskilled and indirect) that all respondents used in calculating their labor factors. They state that in this case, the Department used data from the *Ministry of Labour, Government of India Annual Report 1994–95* which contains 1990–91 data for the average labor cost in rupees per man-day worked for the ''Basic Metals and Alloys Industries.'' Petitioners argue that the labor data found in the *Report* and used by the Department in its preliminary determination are aberrational. First, they note that these data are approximately six years old. Second, they point out that the *Report* does not provide any information as to which industry sectors or companies are included in the category ''Basic Metal and Alloys Industries.'' Third, they argue that the methodology used by companies or industry associations to obtain the data submitted to the Ministry of Labour and compiled for its *Report* is unknown. As a result of the above, petitioners argue that it is not clear whether the labor rate provided in the *Report* closely reflects the average labor rate paid by a large integrated steel producer in India.

Instead of the regression-based model described in its new regulations or the approach used in the preliminary determination, petitioners argue that the Department should instead use a labor surrogate value methodology based on data provided in TATA and SAIL's 1995–1996 Annual Reports to calculate a surrogate labor value. Petitioners claim that a labor factor value based on the actual wages paid to the employees of a large integrated steel producer in the surrogate country is a more accurate means of calculating the labor value than either of the two approaches previously described. Furthermore, petitioners argue that use of a labor value calculated from SAIL and TATA financial information would be consistent with the use of COM, SG&A and profit values derived from annual reports of these companies.

Liaoning and Wuyang argue that, as a surrogate value for labor, Commerce should use the average labor cost per man-day worked for the Basic Metal and Alloys Industries as reported in the *Ministry of Labour Government of India Annual Report 1994–95*, which Commerce used in the preliminary determination. They claim Commerce should not calculate the surrogate labor value using data contained in the financial statements of Indian producers of steel as recommended by petitioners because such a methodology is both unreasonable and unreliable.

First, they argue that the salary and wage data listed in the Indian financial statements include high remuneration for company management personnel and other salaried workers, rather than being specific to line production workers, which is the group for which a surrogate labor valuation is sought. They claim the calculation of any surrogate labor rate based on such figures therefore would grossly inflate the Indian labor rate for production workers in the steel industry.

Second, they argue that any relationship between the annual expenditure of a company for wages, salaries, etc. and the absolute number of employees of any given day during the year is entirely speculative. They state that the Indian steel producer financial statements on the record provide information regarding yearly employee remuneration and benefit amounts, but none of the financial statements provides specific information regarding (1) the number of labor hours worked at each company during the year, (2) the number of different employees paid during the year, (3) whether such employees worked overtime, and (4) whether such employees were paid an additional amount for overtime worked.

Finally, they argue that the record evidence provides no support whatsoever for petitioners' assertion that the employee remuneration paid by SAIL in 1995–96 corresponds only to the 187,504 persons reported as employees on March 31, 1996. They state that the data provided by petitioners vis-à-vis TATA are even more tenuous, since there is no support for their assumption that the total number of employees reported in the 1997 *Iron and Steel Works of the World* publication is accurate or even related to TATA's 1995–96 fiscal year. These questions, they argue, render unusable petitioners' suppositions as to the number of workers employed by each company, and the possible number of hours worked each day by company employees.

In comparison, Liaoning and Wuyang argue that the *Report* used by Commerce in the preliminary determination includes figures that are representative of the entire Indian steel industry, including both large companies and small, and provides labor cost data specific to production line workers. In addition, they state that, as noted in the Commerce Department's factor valuation memoranda, the labor rate provided in the *Report* is inclusive of wages and salaries, all types of bonuses, money value of benefits in kind, old age benefits, maternity benefits, social security charges, family pension, retirement benefits, and other group benefits. They argue that unlike the unsubstantiated figures calculated by petitioners, the Ministry of Labour values are not distorted by conjecture regarding such factors as the number of employees, man days worked, the inclusion of overtime hours. Therefore, they claim Commerce should continue to value labor in the final determination using the average labor cost per man-day worked for the Basic Metal and Alloys Industries from the *Report*, which Commerce did in the preliminary determination.

Department's Position: We agree with Liaoning and Wuyang. Because the regulations applicable to this investigation do not dictate a particular approach to selecting surrogate value for labor, the Department has the discretion in choosing a method of valuing labor. However, it has not been our practice to use the regression-based labor rate developed in the new regulations initiated prior to issuing these new regulations. Because we have not elected to use the regression analysis approach, we need not address all of the arguments concerning this methodology. We also disagree with petitioners' proposal to use the financial statements of SAIL and TATA. These statements include high wages for company management personnel and other salaried workers, and thus are not specific to direct and other production labor. Also, the financial statements only report aggregate labor costs and do not provide information regarding the number of labor hours and thus we could not determine a labor rate for these companies.

Comment 14: Labor Factors

Anshan, Baoshan, Shanghai Pudong and WISCO state that, throughout this investigation, petitioners have contended that the data on labor usage submitted by the Chinese respondents must be compared to information in PaineWebber's *World Steel Dynamics*. Respondents state that petitioners claim that any differences between information reported by the respondents and the information contained in *World Steel Dynamics* is to be treated as

evidence that the Chinese respondents are reporting their information inaccurately is without merit. Anshan, Baoshan, Shanghai Pudong and WISCO state that the labor hours reported are the result of a detailed analysis of the companies' labor forces, based on the Department's reporting requirements. Anshan, Baoshan, Shanghai Pudong and WISCO argue the source documents and methodology used to derive these figures were examined in detail by the Department during verification, and no significant discrepancies were found. Therefore, they argue, these data have been shown to be reliable.

By contrast, respondents argue, the source of the information in *World Steel Dynamics* is unknown, the methodology used by *World Steel Dynamics* to derive that information is not explained, and the figures reported in *World Steel Dynamics* have not been verified. Respondents claim that, in these circumstances, the labor usage figures reported in *World Steel Dynamics* have no probative value at all. Respondents argue that data from this service certainly do not provide a reasonable basis for disregarding the verified information reported by respondents.

Department's Position: We agree with respondents. We verified all of the respondents' reported labor factors and we noted no major discrepancies. In light of these facts, we have no reason to believe that the labor factors they provided in their questionnaire have been misreported.

Comment 15: Valuation of Limestone, Dolomite and Quicklime

Anshan, Baoshan, Shanghai Pudong and WISCO argue that, in the final determination, the Department should value limestone and dolomite based on domestic Indian prices, rather than on Indian *Monthly Statistics*. Respondents argue that domestic Indian prices for limestone and dolomite are preferable because (1) it is Department policy to use domestic, tax-exclusive prices where possible; (2) due to the low market value of limestone, limestone is ordinarily obtained domestically; and (3) import values used for limestone and dolomite are aberrational when compared to the domestic prices submitted for these values. Respondents claim that the Department incorrectly used, as the surrogate value for dolomite, price information for ''calcined'' dolomite, although the dolomite inputs used by respondents are ''uncalcined.'' Furthermore, the value for quicklime, respondents contend, should be the same as the value for limestone because the two products are comparable. They contend that petitioners' argument (see below) is internally inconsistent and should therefore be disregarded.

Liaoning and Wuyang argue that the Department should base the surrogate values for these raw material inputs on data contained in the financial statements of Indian producers. *See Brake Drums and Rotors*, 62 FR at 91631 (Feb. 28, 1997). They state that, following its normal practice, Commerce should derive tax-exclusive surrogate values by deducting from the raw material costs all excise taxes, central sales taxes, and state sales taxes. *See Public Version of the Factor Valuation Memorandum* from *Brake Drums and Rotors*, at 2 (Feb. 21, 1997) (Commerce ''adjusted the domestic average value to exclude the excise and sales tax'' and ''accepted the four-percent sales tax as a conservative estimate of Indian state sales tax and have deducted amounts for sales taxes'' at that rate). They argue a simple average tax-exclusive surrogate value should be calculated for materials for which data exists from more than one company.

In their case brief, petitioners maintain that the import values used in the preliminary determination are accurate surrogate values for limestone and dolomite sourced domestically by some of the respondents, because certain other Chinese steel producers imported limestone and dolomite for use in the production process. Petitioners agree with respondents that it is the responsibility of the Department to find surrogate values which reasonably reflect the economic conditions faced by Chinese producers of cut-to-length carbon steel plate. *See Oscillating Fans*, 56 FR at 55271, 55275. Therefore, petitioners contend that it is reasonable for the Department to use surrogate import raw material input sources when Chinese producers also import the same.

However, in their rebuttal brief, petitioners urge the Department to use adverse facts available in valuing limestone, claiming that respondents failed to provide complete and truthful answers to the Department's questionnaires with regard to the source of supply for these inputs. Should the Department agree to apply adverse facts available, petitioners suggest that it rely on the data of an Indian producer of subject merchandise, SAIL, because this data constitutes both the highest value on the record, as well as the most reliable and appropriate surrogate value under the Department's precedent.

Petitioners urge the Department to value dolomite with the same value that it assigned to limestone. Petitioners argue that respondents' claim that the proper surrogate value for dolomite is for ''uncalcined'' dolomite is without merit, because there is no evidence provided by the respondents or otherwise that their dolomite inputs are uncalcined. In addition, petitioners refute respondents' claim that dolomite and limestone should be valued as ''crushed stones'' (Respondents PAI Memorandum, August 5, 1997). According to petitioners, evidence on the record shows that crushed stones are not pure enough for use in metallurgy.

For quicklime, petitioners argue that the Department should separately value limestone and quicklime, as was done in the preliminary investigation . However, they maintain that should the Department decide to value the two products with the same surrogate value, the Department should use SAIL's value for limestone and quicklime.

Department's Position: We agree with the petitioners in part. The surrogate value for limestone in the preliminary determination was based on the Indian import price. We find that this value is the most representative of the prices for limestone during the POI because the domestic prices submitted by respondents appear to be significantly lower than both the *Monthly Statistics* and data from Indian steel producers that was submitted by petitioners. In addition, because we are unfamiliar with *India 1995: A Reference Annual*, we hesitate to give it greater weight as a source for limestone value than we give to the *Monthly Statistics*, which we have frequently used for valuation purposes and have no reason to believe is not reliable with respect to this input. We also agree with petitioners that some companies import limestone and that this provides support for the use of appropriate import data to value limestone. For the final determination, we are relying on the same surrogate value used in the preliminary determination. We reject petitioners' argument that we should apply adverse facts available for limestone based on what petitioners believe to be uncooperative behavior on the part of one company, because there is no evidence on the record to support their assertion that one company did not act to the best of its ability to provide certain information concerning limestone to the Department.

We agree with respondents that limestone and quicklime are comparable products, based on our review of the *Monthly Statistics*. However, we have decided that the difference between them is too significant to value quicklime based on the surrogate for limestone. We therefore agree with

petitioners that we should value the two products based on their individual values as reported in *Monthly Statistics.*

With respect to dolomite, we agree that limestone and dolomite, though separate products, are of comparable value. We have determined that the *Monthly Statistics* upon which we relied in the preliminary determination are obviously aberrational because the value from the source which we used in the preliminary determination (a value for ''calcinated'' dolomite) is approximately ten times the value of limestone. In contrast, based on our examination of Indian steel producers' data, we find that the value of the dolomite they use (which is not identified as either ''calcinated'' or nor ''calcinated'') is generally significantly lower than that of the limestone they use. Therefore, for the final determination, we determined that the value for ''agglomerated'' dolomite in the Indian *Monthly Statistics* is comparable to that for limestone in the same source. Therefore, we are using the *Monthly Statistics* value for ''agglomerated'' dolomite to value dolomite in the final determination.

Comment 16: Basket Categories—Coal and Iron Ore

Anshan, Baoshan, Shanghai Pudong and WISCO contend that the Department's decision to use a single surrogate value for all coal and iron ore inputs in the preliminary determination was faulty and suggest that the Department instead assign different values for each kind of coal and iron ore input used in the production process.

For coal, they argue that the Department's practice has traditionally been to base its surrogate values on the prices in the surrogate country for materials which most closely reflect the specific grade and chemical composition of the type of input used by the NME producer. See *Certain Helical Spring Lock Washers from the People's Republic of China,* 61 FR 41994, 41996–97 (August 13, 1996) (''*Helical Spring Lock Washers*''), and *Heavy Forged Hand Tools from the People's Republic of China,* 62 FR 11813, 11815 (March 13, 1997). Therefore, they contend that the Department should separately value the different kinds of coal used in the production process. Respondents also contend that coal should be valued and based on Indian, not Indonesian, values.

For iron ore, Anshan, Baoshan, Shanghai Pudong and WISCO assert that the Department should value different forms of this input based on the market prices paid for such ores. These market economy purchase prices and quantities, they maintain, were verified by the Department. Similarly, they urge the Department to calculate freight rates for the delivery of iron ore purchased from market economy suppliers using the actual rates paid by the Chinese respondents for such shipments during the POI. For domestically purchased iron ore, Anshan, Baoshan, Shanghai Pudong and WISCO suggest that the Department value all iron ore using one Indian domestic price from *India 1995: A Reference Manual.* They also maintain that, in valuing freight for domestic iron ore purchases, the Department should average the distances from each company's iron ore suppliers and apply surrogate freight rates to this average distance.

Petitioners maintain that it was appropriate to assign a single surrogate value for all coal used, because respondents reported various kinds of coal in a confusing manner. In addition, they assert that the value used in the preliminary determination is accurate and reasonable. Petitioners contend, however, that should the Department decide to value different kinds of coal separately, it should rely on surrogate values obtained from annual reports of certain Indian producers of subject merchandise.

With respect to iron ore, petitioners assert that domestically purchased iron ore could not be significantly cheaper than other forms purchased from market economy suppliers due to the fact that the imported iron ore is in the form of concentrate, which requires further processing before it can be used. As a result, they urge the Department to maintain the methodology it used in the preliminary determination.

Department's Position: COAL: We agree with respondents that the Department should value coal based on the surrogate country values for types of coal which most closely reflect the specific grades and chemical composition of coal types used by the Chinese producers. We have valued coking coal and other coal separately, relying on Indian *Monthly Statistics* to formulate appropriate surrogate values. We did not value thermal coal separately because the information submitted by respondents comes from countries not normally used as surrogates and we were unable to independently find values for this type of coal. For all coal other than coking coal, we based our surrogate value on the classifications ''other,'' ''anthracite'' and ''steam coal,'' which we averaged. We used Indian *Monthly Statistics* because we determined that the data were more appropriate and more specific than the data from the Indian steel producers.

Iron Ore: With respect to iron ore, we note that it has been the Department's position in the past that when a significant portion of an input used by a given producer is purchased from market economy suppliers, the Department relies entirely on the market economy purchase prices in valuing that input for that producer. Our methodology in the preliminary determination was to aggregate all iron ore whether sourced domestically or from market economy suppliers into a single basket which we valued at international prices from market economy suppliers. However, for the final determination, we have, to the extent possible, treated different types of iron ore as separate factors of production (*i.e.,* we have valued different types of iron ore as separate inputs). When a producer has purchased any type of iron ore from one or more market economy suppliers, we have relied to the fullest extent possible on the market economy purchase prices which were verified by the Department. When a given producer sourced a particular type of iron ore only locally, or imported only an insignificant percentage of that type of iron ore, we valued that type of iron ore for that producer based on Indian *Monthly Statistics.*

Freight For Coal and Iron Ore: Where we relied on the market economy purchase prices to value the input, we also relied, for freight cost from the market economy suppliers to the Chinese port, on the market economy freight rates which the Department verified. For Chinese inland freight on market economy purchased imports and for domestically sourced inputs, we relied on the Chinese domestic freight factors, valued using Indian surrogate data. We have not based domestic freight costs on an average of the distance between all suppliers and the relevant producers because a supplier-by-supplier calculation provides a more accurate estimate of the costs of a producer that sources different amounts of an input from multiple suppliers in different locations. *See* Comment 12 regarding the Department's current freight methodology.

Comment 17: Valuation of Steel Scrap and Pig Iron

Anshan, Baoshan, Shanghai Pudong, and WISCO argue that the Department should value steel scrap and pig iron based on domestic price information from India from the *Economic Times* because the prices reported in the *Economic Times* represents prevailing prices in the Indian market which are preferable to import prices in the

Department's hierarchy of surrogate value sources, and the prices reported in the *Economic Times* are contemporaneous with the POI.

Liaoning and Wuyang argue that the Department should base the surrogate values for steel scrap and pig iron inputs on data contained in the financial statements of Indian producers, citing *Brake Drums and Rotors,* 62 FR at 9163. They state that, following its normal practice, Commerce should derive tax-exclusive surrogate values by deducting from the raw material costs all excise taxes, central sales taxes, and state sales taxes. *See Factor Valuation Memorandum from Brake Drums and Rotors,* at 2 (Feb. 21, 1997), which Liaoning and Wuyang have placed on the record of this investigation (Commerce ''adjusted the domestic average value to exclude the excise and sales tax'' and ''accepted the four-percent sales tax as a conservative estimate of Indian state sales tax and have deducted amounts for sales taxes'' at that rate). Liaoning and Wuyang argue that a simple average tax-exclusive surrogate value should be calculated for materials for which data exists from more than one company. *See Factor Valuation Memorandum from Brake Drums and Rotors,* at 4.

Petitioners contend that the Department should value steel scrap and pig iron based on *U.N. Trade Commodity Statistics,* or else continue to use the value used in the preliminary determination, which is based on Indonesian import data. They maintain that values that the four respondents submitted from the *Economic Times* represent a snapshot of prices that do not represent prevailing prices throughout the entire period of investigation.

Department's Position: For steel scrap, we are using contemporaneous import data from Indian *Monthly Statistics.* For pig iron, we were unable to use the Indian *Monthly Statistics* as we determined that the import price was aberrational because the Indian data was based on a very small quantity and was almost two times the price of the Indonesian pig iron. Consequently, we are continuing to use prices from Indonesian import statistics that we used in the preliminary determination. We did not use the data submitted by either petitioners or respondents for either pig iron and steel scrap because we found that these values were aberrational compared to the Indonesian import statistics. We did not use the values from the *Economic Times* because we determine that the information in the *Economic Times* submitted by respondents and in the *U.N. Trade Commodity Statistics* submitted by petitioners was aberrational. More detail on this issue may be found in the business proprietary version of the *Concurrence Memorandum.*

Comment 18: Valuation of Iron Scrap, Fluorite/Fluorspar, Coke, Aluminum, Magnesium Ore, Ferrosilicon, Ferromanganese and Magnesium Ore

Anshan, Baoshan, Shanghai Pudong and WISCO argue that the Department should value iron scrap, fluorite/fluorspar, coke, aluminum, magnesium ore, ferrosilicon, ferromanganese, and magnesium ore based on Indian *Monthly Statistics* that correspond to the investigation period. In the preliminary determination, the Department valued some of these inputs based on import statistics which pre-dated the period of investigation. These respondents argue that petitioners' suggestion that the Department value some of these inputs based on data from *1994 U.N. Trade Commodity Trade Statistics* should be ignored, respondents argue because it is not contemporaneous and less specific to the inputs in question.

Liaoning and Wuyang argue that the Department should base the surrogate values for these inputs on data contained in the financial statements of Indian steel producers. *See Brake Drums and Rotors,* 62 FR at 9163. They state that, following its normal practice, Commerce should derive tax-exclusive surrogate values by deducting from the raw material costs all excise taxes, central sales taxes, and state sales taxes, citing to *Factor Valuation Memorandum from Brake Drums and Rotors,* at 2 (Feb. 21, 1997) which they have added to the record of this case. They argue a simple average tax-exclusive surrogate value should be calculated for materials for which data exists from more than one company. *See Factor Valuation Memorandum from Brake Drums and Rotors,* at 4.

Petitioners urge the Department to either value these inputs based on the *1994 U.N. Commodity Trade Statistics,* and argue that these statistics, although less contemporaneous, are more reliable.

Department's Position: We agree with the four respondents. To the extent possible, we have relied on contemporaneous data, as the Department normally prefers to use prices that are representative of prices in effect during the POI. For iron scrap, we used the same Indian *Monthly Statistics* value as we did in the preliminary determination because this is the most contemporaneous value on the record. For ferrosilicon, flourite/fluorspar, ferromanganese, magnesium ore, aluminum, and coke, we have adopted the values from the Indian *Monthly Statistics* for April through July of 1996, as submitted by the respondents as these values are more contemporaneous with the POI than the similar values used in the preliminary determination. We have rejected Liaoning and Wuyang's argument that we should value these factors based on Indian domestic data because we have found appropriate surrogate values that represent a larger sample of prices from Indian *Monthly Statistics.*

Comment 19: Scale and Slag

Anshan, Baoshan, Shanghai Pudong and WISCO argue that the Department appropriately valued slag at the low U.S. market price of $6.91 per metric ton and that the Department should continue to value slag in the same manner for the final determination. Anshan, Baoshan, Shanghai Pudong and WISCO additionally contend, however, that the Indian import price of $483.91 per metric ton for scale is aberrational high and that the Department should apply the same surrogate value for scale as it applies to slag. Furthermore, these respondents argue that, because both slag and scale are self-generated by-products of the steelmaking process, the Department should not apply any freight expense to the surrogate prices for slag and scale in the final determination.

Petitioners agree that slag is essentially a mineral waste and has a relative low value. Scale, on the other hand, they argue, is processed steel, consisting of cuttings from actual steel slabs. Scale, reason petitioners, thus has a far greater value as an input in steelmaking than does slag. Petitioners continue that there is nothing on the record to substantiate respondents' claim that the Indian price for scale is ''aberrational.'' Petitioners conclude that the Indian price the Department adopted in the preliminary determination is reliable and should be used for the final determination.

Department's Position: We agree with respondents in part. Scale is of little value in the steelmaking process. Because slag and scale are very similar, the Department used the same value for scale and slag ($6.91 per metric ton) in its final determination. Furthermore, we agree with respondent that a freight expense should not be added to the surrogate prices for slag and scale when no freight is incurred in China on these inputs, because they are self-generated.

Comment 20: Stones

Anshan, Baoshan, Shanghai Pudong and WISCO argue that, to the extent that surrogate values for some types of ''stones'' have already been submitted on the record (*e.g.*, manganese, quicklime, limestone and dolomite), the Department should use that information for surrogate values for these inputs. To value types of stones for which no specific surrogate value has been provided to the Department (*e.g.*, serpentine, calcium carbon trioxide ($CaCO_3$), silicon sand/silicon dioxide), the Department should use the surrogate value for ''stone, sand and gravel'' proposed by the petitioners in their August 5, 1997 submission at Exhibit A—that is, $25.21 per metric ton.

Petitioners state that, with respect to silicon, the Department has already found an appropriate surrogate value. Petitioners contend that respondents have conceded that the category ''stones'' contains unreported ''silicon sand'' and silicon dioxide in unknown quantities. Therefore, petitioners state that the Department should use the value for silicon as facts available in valuing ''stones'' for which no specific surrogate value has been provided. In addition, regarding calcium carbonate (CaC_2) rocks, petitioners argue that the Department should recalculate consumption for each company.

Department's Position: We agree with respondents that the Department should use appropriate and specific surrogate values for all types of ''stones.'' For the final determination, for Baoshan, Liaoning, Shanghai Pudong and WISCO, we have obtained appropriate separate values for all types of stones which were separately reported. For Anshan, we have obtained a value from the *U.N. Trade Commodity Statistics* for ''stones, sand and gravel'' and are valuing stones for which we do not have a surrogate value using this data. We disagree with petitioners' assertion that we should use silicon as facts available for silicon sand. Based on our understanding of the steel industry, silicon sand is more comparable to generic sand than it is to silicon, which is a comparatively expensive commodity.

Comment 21: Silicon Manganese

Respondents note that, in the preliminary determination, the Department valued silicon manganese at $578.68 per metric ton, based on information contained in the 1995–96 annual report of SAIL. Respondents argue that, if the Department continues to use this source in the final determination, the value should be adjusted not only for inflation, but also to remove Indian taxes reflected in the reported number.

Petitioners counter that nothing in the record supports respondents' claim that taxes are included in the surrogate value used by the Department for silicon manganese (based on SAIL data). Even if taxes were included, furthermore, there is no record information that would allow for a determination of the amount of taxes paid. Accordingly, petitioners contend that the SAIL data must be used as reported.

Department's Position: Although we consider the value for silicon manganese we used in the preliminary determination appropriate for use in our final determination calculations, we have located a more contemporaneous Indian *Monthly Statistic* for the period April 1996 through July 1996 which we believe to be more accurate and representative of a larger sample of the commodity. For the final determination, we are relying on this import price to value silicon manganese.

Comment 22: Electricity

Anshan, Baoshan, Shanghai Pudong and WISCO contend that, in the preliminary determination, the Department valued electricity at $0.06 per kilowatt hour, based on data reported in the July 1995 publication *Current Energy Scene in India,* published by the Center for Monitoring Indian Economy. These respondents contend that the Department should continue to use this value in the final determination.

Petitioners state that respondents' suggested rate for electricity reflects the simple average of the Indian state electricity rates for the ''large industry'' category as of January 1, 1995, adjusted to the POI. *See* Shanghai Pudong Factor Valuation Memorandum, June 3, 1997, at 4–5. Petitioners maintain that, in its final determination, the Department should use the electricity rates reported by Indian flat-rolled steel producers in their annual reports for the fiscal year ending March 1996. These reported rates are preferable, argue petitioners, because they are more contemporaneous with the POI and are specific to large steel manufacturers. *See Polyvinyl Alcohol from the People's Republic of China,* 61 FR 14057 at 14061 (March 29, 1996) (Final Determination). Petitioners calculate the weighted average electricity rate for Pennar Steels Ltd., Nippon Denro Ispat Ltd., Visvesveraya Iron & Steel Ltd., SAIL, and Tata Steel Ltd., at $0.0648 per kilowatt hour.

Department's Position: We agree with respondents. We consider the rate for electricity we used in the preliminary determination appropriate for use in our final determination calculations as it is publicly available and nothing on the record suggests that this value is aberrational.

Comment 23: Scope Issue

Petitioners argue that the scope should be clarified to state that it covers plate 4.75 mm in thickness or more, in nominal or actual thickness. They state that, due to thickness tolerances in the various common plate specifications, foreign producers may sell plate as 3⁄16 inch (4.75 mm) plate at thickness less than 3⁄16 inch and remain within the specification.

Petitioners allege that there is a significant U.S. market for 3⁄16-inch (4.75 mm) plate. They also argue that they always intended that the scope of the investigation would cover product of 4.75 mm in actual or nominal thickness because any plate within the tolerance for 4.75 mm nominal thickness plate will compete directly with any other plate within the tolerance. The customer knows that all plates within the tolerance meet the performance standards of the specification.

Petitioners argue that actual and nominal thickness products are produced on the same equipment, marketed in the same way to the same customers and generally priced identically. They allege that failure to include plate with a nominal thickness of at least 4.75 mm but an actual thickness of less than 4.75 mm would seriously undermine the scope of the investigation by allowing products that are considered identical in the market to be treated differently under the scope.

Anshan, Baoshan, Shanghai Pudong and WISCO point out that petitioners' request to change the scope was submitted more than five months after the filing of the petition. They argue that petitioners' proposal to change the scope so late in the proceeding is contrary to the requirements of the law. Respondents note that the statute does not permit the Department to amend the scope of the petition so late in this investigation.

Department's Position: We disagree with petitioners and have decided not to change the scope of products under investigation. For a more complete discussion of this issue, *See* Memorandum on Scope of Investigations on Carbon Steel Plate from Joseph Spetrini to Robert S. LaRussa.

Comment 24: Alloy/Non-Alloy Steel Issue

Petitioners allege that foreign producers are beginning to slightly vary

the alloy content of their carbon plate in order to technically remove the product from the non-alloy steel tariff subcategories in the Harmonized Tariff Schedule of the United States (''HTSUS'') and place the products within the ''other alloy steel'' HTSUS subcategories without changing the specification, grade, physical characteristics or applications of the CTLP. Petitioners contend that such low-alloy plates should be covered by the scope.

Petitioners argue that products classified as alloy steel under the HTS, but ordered and produced to ''carbon'' steel specifications, should be included within the scope of the investigation. They argue that the alloys being added to these products are not changing the performance characteristics of plate, and the alloy-added carbon products and other carbon products are the functional equivalents of one another. Petitioners further contend that the products are produced by the same manufacturers on the same equipment, are sold to the same customers for the same uses, and have nearly identical costs.

Petitioners assert that where the added alloy does not change the performance characteristics of the plate or affect the product's classification within the industry specification, the product should remain within the scope of the investigation. They argue that the addition of alloys that do not change the performance characteristics or specifications of the product will not change the purchasers' perception of the value, function or use of the product. Petitioners conclude by stating that the failure to include such completely substitutable products within the scope would undermine the efficacy of any order.

Anshan, Baoshan, Shanghai Pudong and WISCO again argue that petitioners' request to change the scope was untimely submitted and should be rejected by the Department, as it is contrary to the requirements of the law. Moreover, respondents contend that Department and classification practice demonstrate that carbon steel does not include products with alloying agents such as boron. Finally, respondents assert that the statute does not permit the Department to amend the scope of the petition proposed in the manner proposed by petitioners so late in this investigation.

Department's Position: We disagree with petitioners and have decided not to change the scope of products under investigation. For a more complete discussion of this issue, *See* Memorandum on Scope of Investigations on Carbon Steel Plate from Joseph Spetrini to Robert S. LaRussa.

Comment 25: River Freight

Anshan, Baoshan, Shanghai Pudong and WISCO argue that, in the final determination, the Department should not value river freight costs for purchases of materials (and for the shipments of finished products by the Chinese producers) using the surrogate value relied upon for the preliminary determination, which was based on a 1993 embassy cable regarding river barge rates in India originally submitted for *Helical Spring Lock Washers,* 61 FR at 41994. In particular, Anshan, Baoshan, Shanghai Pudong and WISCO argue that this source should not be used in the final determination because (1) the rates do not in any way reflect the costs of shipping raw materials and merchandise on the Yangtze River on which their steel mill and export facilities are located, and (2) the rates do not even accurately reflect the costs of river shipping in India.

Respondents argue that the Department must, to the extent possible, select surrogate values for river rates which accurately and fairly reflect the costs of the shipping raw materials and steel products on the Yangtze River. Respondents maintain that the use of Indian river barge rates to establish surrogate values for Chinese shipments of raw materials and final steel products on the Yangtze River is inappropriate because there are no rivers in India that are comparable to the Yangtze River and river shipping rates are heavily dependent on the types of rivers used for shipping and the types of products being shipped.

As an alternative to the Indian barge rates in the 1993 cable, respondents urge that the Department use published Mississippi River shipping rates as surrogate values for the cost of shipping on the Yangtze River because, they claim, the Mississippi River is a ''working river'' that is comparable in size to the Yangtze River.

If the Department continues to use Indian shipping rates to value shipping on the Yangtze river, respondents recommend that the Department use current, actual shipping rates rather than the 1993 quotation used in the preliminary determination. Respondents argue that the 1996–97 rates collected and reported by the Ministry of Surface Transport of the Government of India, which they have submitted, are preferable because they are less aberrational, more contemporaneous, and based on a broader range or merchandise than the rates used in the preliminary determination, which do not identify the product for which these rates were quoted.

Petitioners argue that the data on river freight supplied by the respondents are unreliable; therefore, they urge, the Department should continue to use the same values as in the preliminary determination. Petitioners argue that respondents' claim that Indian rivers are generally not accessible to large vessels is baseless, stating that CIA reports indicate that a large percentage of inland waterways in India are navigable.

Petitioners object to the use of U.S. freight rates as surrogate values, arguing that the Department must calculate normal value based on, ''to the extent possible, the prices or costs of factors of production in one or more market economy countries that are * * * at a level of economic development comparable to that of the nonmarket economy country * * *.'' 19 U.S.C. 1677b(c)(4). Petitioners contend that United States is not an appropriate surrogate country because it is at a different level of economic development than the People's Republic of China and not one of the five countries identified by the Department as potentially suitable surrogates. *See* Memorandum to E. Yang from D. Mueller, January 29, 1997 (''DOC Surrogate Selection Memo'').

Further, petitioners assert that the information on Indian river freight rates supplied by respondents is questionable with respect to its meaning, origin and reliability. Petitioners argue that respondents have not provided any credible evidence that the rates used by the Department in the preliminary determination are ''aberrational.''

Department's Position: We agree with both respondents and petitioners in part. For the final determination, we have decided to base the river rates freight on a simple average of the rates used in the preliminary determination and information submitted by respondents. We note that the river rates we used in the preliminary determination were significantly higher than rates for other forms of transportation. For example, to ship merchandise 1100 km. by river using the rates used in the preliminary determination would cost $68 per ton, whereas to ship the same distance by train would only cost approximately $15 per ton. We note that a respondent would usually use, in the normal course of business, the most cost effective and efficient mode of transportation. However, respondents did not ship by train. It is our own practice to value the factors of production actually used by respondents. Consequently, we have concluded that to only use the surrogate

value we used in the preliminary results would be inappropriate.

Respondents also submitted river rates from the Inland Waterways Authority of India, which is part of the Ministry of Surface Transportation of the Government of India. We disagree with petitioners' argument that the Department should reject this information because respondents used a consultant in obtaining this information. While it is true that a consultant was involved in obtaining this information, the fact remains that the source of the data is the Indian Government. In addition, we can find no evidence to support the conclusion that the river rates presented in that document are unreliable or distortive. The rates represent a wide variety of rivers, products and distances in India, including river rates to and from Calcutta, which is a major port. At the same time, we hesitate to use only the river rate information obtained by respondents for the final determination. As no evidence on the record indicates what instructions were given to the consultant or what questions the consultant asked the Indian Waterways Authority to obtain the data.

We also disagree with respondents' contention that we should use rates from the Mississippi River for the final determination. First, the United States is not one of the selected surrogate countries that the Department normally uses. The Department also searched for alternative sources of information from other surrogate countries. In particular, we attempted to obtain river rate information from Egypt (the Nile river) and Pakistan (the Indus river). However, we were unable to obtain publicly available information for river rates from these countries. Second, all rivers are to some degree unique, and the Department's ability to address the quantity and the types of differences noted by respondents is limited. Thus, it is not our practice to find a surrogate value for freight over a particular route, but rather to ascertain a reasonable value for river freight.

Comment 26: Ocean Freight Rates

Respondents argue that the Department should apply product- and port-specific ocean freight rates. Respondents maintain that, in the preliminary determination, the Department improperly applied the ocean freight rates for shipping steel plate to other types of products, which would necessarily have different shipping rates. Respondents urge that the Department should value raw materials purchased from market-economy suppliers using sale-specific shipping cost information from market economy ocean freight providers. Respondents recommend that product- and port-specific ocean-shipping rates published in Shipping Intelligence Weekly be used to value ocean freight shipments in the final determination.

Petitioners argue that the Department should continue using the ocean freight rates from U.S. import statistic reports (IM–145 reports) used in the preliminary determination. Petitioners assert that the Department should not value raw materials purchased from market-economy suppliers using sale-specific shipping cost information from market economy shippers unless there is sufficient evidence that the specific respondent purchased the input from a market economy supplier in market economy currency. Further, petitioners argue that the surrogate values based on shipping rates reported from Shipping Intelligence Weekly submitted by respondents are inadequate for several reasons. First, petitioners note that rates reported from the Shipping Intelligence Weekly are not actual freight rates paid by customers, but instead are described as ''average earnings.'' Second, petitioners contend that respondents chose rates for the most efficient type of vessel for their surrogate value. Third, petitioners note that information from Shipping Intelligence Weekly was not accompanied by the certification of accuracy as required by 19 CFR § 353.31(i). Petitioners urge the Department to continue using import data in the preliminary determination, since the import data is representative of a large sample of shipments and relate specifically to the chosen surrogate country.

Department's Position: We agree with petitioners that rates reported from Shipping Intelligence Weekly are not actual freight rates paid by customers, but instead are described as ''average earnings.'' Second, we agree that respondents appear to have provided rate data for the most efficient type of vessel, rather than the actual freight rates paid by customers. Consequently, we find that the value reported in the Shipping Intelligence Weekly are not appropriate for use as surrogate values for ocean freight. For the final determination, therefore, we have continued to use the IM–145 ocean rates used in the preliminary determination.

Comment 27: Brokerage and Handling

Anshan, Baoshan, Shanghai Pudong and WISCO argue that the surrogate value for brokerage and handling charges used in the preliminary determination is aberrational. This value was based on ranged, public information from 1991–92 that was originally submitted in the Department's investigation of *Sulphur Vat Dyes from India,* 38 FR at 11835, 11841. These respondents recommend that the Department use, instead, as a surrogate value for brokerage and handling, prices they have submitted which are reported by Amrok Shipping Private Ltd. , a shipper from India.

Liaoning and Wuyang argue that the Department should use a brokerage and handling value contained in the public version of the response of Isibars Limited in the antidumping review of *Stainless Steel Wire Rod from India,* which they have added to the record of this case to value foreign brokerage. They maintain that the value for brokerage and handling used in the preliminary determination is inappropriate because that value is for a product unrelated to the subject merchandise of this investigation. Liaoning and Wuyang contend that the brokerage and handling value from 1995–96 *Stainless Steel Wire Rod from India* is preferable because it is specific to steel, more contemporaneous, and more reliable, since it has been verified by the Department.

Petitioners argue that the Department should continue to use the surrogate value for brokerage and handling used in the preliminary determination. Petitioners find it significant that this surrogate value for foreign brokerage and handling was used by the Department in two other final investigations. Petitioners argue that information provided by the four respondents is an anecdotal and selective commentary by a private shipping company that may have been paid to act as a consultant by the respondents. Petitioners urge that the Department reject the information provided by the four respondents on the basis that it is likely to be biased and unreliable.

Department's Position: We agree with Liaoning and Wuyang. In the preliminary determination, we used brokerage and handling rates as reported in ranged, public information from 1991–92 that was originally submitted in the Department's investigation of *Sulphur Vat Dyes.* We are unfamiliar with the Amrok Shipping brokerage and handling information submitted by Anshan, Baoshan, Shanghai Pudong and WISCO and do not know what questions the four respondents asked to obtain the brokerage and handling rates. The brokerage and handling rates submitted constitute an individual's estimate and were not specific concerning certain charges. In addition, we have no background information on the period

of time applicable to the brokerage and handling values submitted by these respondents. Since the brokerage and handling rates in used in the *Stainless Steel Wire Rod* are more contemporaneous than the information used in the preliminary determination, specific to steel and verified by the Department, we have used those rates for the final determination.

Comment 28: Rejection of Untimely Factual Information

The four respondents argue that the Department should not reject factual information submitted within the deadlines established by its regulations. Thus, respondents urge the Department to reconsider and reverse its earlier decision to reject submissions from Anshan, Baoshan and WISCO. Respondents maintain that the information at issue was submitted within the deadlines pursuant to the Department's regulations, which allow for the submission of factual information in an antidumping investigation up to one week prior to the start of verification, in accordance with 19 CFR § 353.31(a). Respondents maintain that the Department, in rejecting certain portions of the respondents' submission, misapplied the provision of 19 CFR § 353.31(b)(2), which states that, '' in no event will the Secretary consider unsolicited questionnaire responses submitted after the date of publication of the Secretary's preliminary determination.'' Citing to the preamble of the relevant regulations, respondents argue that this provision applies only to questionnaire responses received from voluntary respondents and not to those from mandatory respondents. *See* Antidumping Duties, 54 FR at 12742, 12759–60 (Mar. 28, 1989) (final rule).

Further, respondents maintain that, in accordance with the provisions of its regulations, the Department has in the past allowed respondents to supplement their previous questionnaire responses prior to verification. *See Certain Iron Construction Casting from the People's Republic of China,* 50 FR at 43594 (Oct. 28, 1985); *Polyvinyl Alcohol from the People's Republic of China,* 60 FR at 32757 (June 17, 1997); *Collated Roofing Nails from the People's Republic of China,* 62 FR at 25895 (May 12, 1997) (preliminary determination). Moreover, respondents argue that the Department had sufficient time to analyze and verify the additional information submitted, and that the rejection of this information would unfairly penalize respondents for providing information that they claim the Department had not requested be provided in a questionnaire with an earlier due date.

For Anshan, the rejected information consisted of freight information for certain inputs. Anshan argues that this freight information should be accepted because Commerce had not requested this information in its supplemental questionnaires and thus this information was not untimely provided.

For Baoshan Steel, the Department had requested information on distances from suppliers for all inputs in its supplemental questionnaire, and Baoshan Steel neglected to include information on the distance for one category of inputs. Baoshan Steel submitted the omitted information one week prior to the start of verification.

For WISCO, the information rejected by the Department consisted of the factors of production for producing oxygen and similar gases. Respondents argue that the Department, in the supplemental questionnaire, gave WISCO the option of either providing these factors of production or explaining why these factors of production should not be used. Respondents allege that, due to an inadvertent error, the factor information they intended to provide was omitted from the supplemental questionnaire. Respondents submitted this information one week prior to verification.

Petitioners argue that respondents' challenge to the Department's decision to reject their untimely submission of information requested in the Department's questionnaires is both misleading and without merit. Petitioners refer to 19 CFR § 353.32(b), which provides that, in the Secretary's written request to an interested party for a response to a questionnaire, the Secretary will specify the time limit for response. 'The Secretary will return to the submitter, with written reasons for return of the document, any untimely or unsolicited questionnaire responses rejected by the Department.'' 19 CFR § 353.31(b)(2). Petitioners maintain that the respondents' submissions were properly rejected by the Department in accordance with section 353.31(b)(2) because (1) the information that respondents claim was improperly rejected by the Department consists of information provided in response to supplemental questionnaires and (2) the information was submitted after the deadline for questionnaire responses. Petitioners add that, although the Department has allowed respondents to supplement their previous questionnaire responses even later than seven days prior to verification in past cases, regulations should still be enforced under the present circumstances. Petitioners also maintain that respondents have not adequately demonstrated that they were not given ample notice and opportunity to file said information in a timely fashion. With respect to Anshan, petitioners argue that Anshan's freight information was not submitted within the deadlines established by the Department's regulations. With respect to Baoshan, petitioners argue that the rejected information was requested both in the Department's December 19, 1996 and again in the Department's March 13, 1997 questionnaire. Petitioners argue that Baoshan had ample notice and opportunity to comply with the Department's requests and that, as noted in the Department's letter of June 16, 1997, there is no reason to believe that this information was 'inadvertently omitted.'' *See* letter from Edward C. Yang to Shearman & Sterling, June 16, 1997. With respect to WISCO, petitioners argue that the Department correctly rejected WISCO's submission of factors of production for oxygen and similar gases, because respondents failed to provide this information, which was requested by the Department in its questionnaire of March 12, 1997, in its April 14, 1997 supplemental questionnaire response. Petitioners argue that, in response to the Department's supplemental questionnaire, WISCO neither provided factors of production for oxygen and similar gases nor explained why it was inappropriate to revise its calculations to account for the production of oxygen and similar gases.

Department's Position: We agree with Anshan, but not with Baoshan and WISCO. For Anshan, we have reconsidered our prior decision to reject information on freight distances for certain inputs. Because, in its March 12, 1997 supplemental questionnaire, the Department did not specifically request that Anshan provide information concerning the means of transportation or distances for certain material inputs obtained from domestic sources, this information did not constitute an out-of-time reply to a questionnaire, and because the information was otherwise timely provided, we should reject this information. Therefore, for the final determination, we have accepted Anshan's information on distances between its plant and the sources of certain inputs, and have used this information in calculating freight expenses for those inputs.

With regard to Baoshan, the Department has determined, that it correctly rejected the information submitted by Baoshan on June 10, 1997 with respect to the shipping distances

for one category of input. Baoshan stated in that submission, which was received one week prior to verification, that they omitted such information in the supplemental questionnaire responses due to an alleged oversight. Because the Department specifically requested this information in its March 12, 1997 supplemental questionnaire to Baoshan, which required a complete response by April 14, 1997, Baoshan had ample notice and opportunity to comply with the Department's requests for this information. Therefore, we did not use the rejected information for the final determination.

For WISCO, the Department has determined that it correctly rejected information on factors of production for oxygen and similar gases. The Department requested this information in a supplemental questionnaire on March 12, 1997. WISCO has stated that it inadvertently omitted the information from its April 14, 1997 response due to a mis-communication and finally submitted the data in its June 10, 1997 submission. Since WISCO had ample notice and opportunity to comply with the Department's requests, we have not used the untimely submitted information on factors of production for oxygen and similar gases for the final determination.

Although the legislative history of the regulation cited by the four respondents indicates that, in ''unusual circumstances,'' the Department may retain and consider ''unsolicited questionnaire responses'' (*i.e.,* initial responses from voluntary respondents), this provision does not revoke the rules of timeliness even for such respondents. Further, respondents' reliance on this passage is inapposite, because they are mandatory, not voluntary, respondents and the data at issue were ''untimely'' provided (based on the time limit specified by Commerce for response to the questionnaire), not ''unsolicited.'' *See* 54 FR at 12759–60, 12781.

Comment 29: General Issues Regarding Selection of Surrogate Values

Anshan, Baoshan, Liaoning and WISCO argue that the Department should revise the methodology used to select surrogate values for material inputs. Respondents argue that, in the preliminary determination, the Department departed from its established ''rules'' for selecting surrogate values, which were developed to ensure ''accuracy, fairness and predictability.'' *Oscillating Fans,* 56 FR at 55271, 55275, cited with approval in *Lasko,* 43 F.3d 1442.

These respondents claim that the Department made certain ''methodological errors'' in selecting the surrogate values used in the preliminary determination, and urge the following principles should guide the Department's selection of surrogate values. First, these respondents maintain that the Department should use surrogate values that conform to the specific materials used in production. Respondents argue that by assigning values from 'basket' categories to certain inputs which they reported at a more specific level, the Department departed from its established practice to base its surrogate values on the prices in the surrogate country for materials which most closely reflect the specific grade and chemical composition of the type of input used by the NME producer, whenever possible. *See Lock Washers,* 61 FR at 41994, 41996–97. Anshan, Baoshan, Shanghai Pudong and WISCO argue that the Department's reasoning for using ''basket'' categories for surrogate values is incorrect. For example, they contend that publicly available published information on domestic prices in India for each of the types of coal used by the Chinese respondents was available and provided in their March 4 and August 5, 1997 submissions, despite the Department's statement in the preliminary determination that the use of these ''basket'' categories was necessary because the Department did not have publicly available published information on the specific prices for specific inputs within the basket categories. *Preliminary Determination,* 62 FR at 31976. In addition, respondents note that each of them provided information on actual prices paid for each type of iron ore purchased from market economy suppliers in both the questionnaire and supplemental questionnaire responses.

Second, the four respondents maintain that the Department departed from its established practice of selecting, where possible, sources which provide domestic, tax-exclusive prices. *See Brake Drums and Rotors,* 62 FR at 9160, 9163. Instead, respondents maintain that the Department used import data to value a number of inputs for which publicly available published information on domestic prices was already on the record. Respondents argue that the Department should use domestic, tax-exclusive prices in preference to import values.

Third, they maintain, when the Department does use import data, it should, in accordance with its established practice, use the available import data that is most contemporaneous with the investigation period. Respondents argue that, in the final determination, when the Department uses import data, it should use Indian import data for the investigation period which have become available since the publication of the preliminary determination and have been submitted for the record of this investigation.

Fourth, they insist that the Department should not use surrogate values that are aberrational. *See Sulfanilic Acid from the Republic of Hungary,* 57 FR at 48203, 48206 (Oct. 22, 1992). These respondents contend that a number of surrogate values used in the preliminary determination were aberrational, resulting in the distortion of the results of the Department's preliminary calculations. They urge the Department to carefully review the surrogate values used in the final determination to avoid similar distortions. In addition, respondents advise that where the values obtained from the primary surrogate are aberrational or otherwise unreasonable, the Department should use sources other than the designated ''primary'' surrogate for surrogate values. *Heavy Forged Hand Tools from the People's Republic of China,* 60 FR at 49251, 49253 (Sept. 22, 1995).

Fifth, respondents argue that the Department should properly inflate any surrogate values that are not contemporaneous with the investigation period. In order to do so, respondents maintain that the Department should correct certain clerical errors involving both the selection of the appropriate data from the *International Financial Statistics* publication and the decision as to whether to use wholesale price index (WPI) or Consumer Price Index (CPI) inflators for certain surrogate values.

Petitioners argue that the Department properly selected surrogate values for material inputs in its preliminary investigation in accordance with previous practices and regulations. Petitioners refer to Section 773(c)(1) of the Act, which states that for the purposes of determining normal value in a non-market economy, ''the valuation of the factors of production shall be based on the best available information regarding the values of such factors.'' 19 U.S. C. 1677b(c)(1). Petitioners assert that the statute does not require Commerce to follow any single approach in evaluating data. *Olympia Industrial, Inc.* v. *United States,* Slip Op. 97–44 (Ct. Int'l Trade 1997).

Petitioners state the following with regard to the ''established rules'' governing the Department's approach in selecting surrogate values: the

Department has stated that its objective in selecting surrogate values in a non-market economy investigation is to value the inputs at prices that most closely reflect the type of product used by producers in the country under investigation. *See Helical Spring Lock Washers,* 61 FR at 11813, 11815 (March 13, 1997); the Department's clear preference is to use published information that is most closely concurrent to the specific period of investigation (POI) or period of review (POR). *See Drawer Slides,* 60 FR at 54472, 54476 (October 24, 1995); the Department has a longstanding practice of relying, to the extent possible on publicly available information. *See Sebacic Acid From the People's Republic of China,* 62 FR at 10530, 10534 (March 7, 1997); it is the Department's practice, in selecting the ''best available data,'' to use data from a variety of sources and to use different sources to value different factors. *Sulfanilic Acid from the People's Republic of China,* 61 FR at 53703, 53704 (October 15, 1996).

Petitioners argue that in the preliminary determination, the Department clearly states that it maintained a preference for using publicly available tax-exclusive domestic prices and indicated that the Department evaluated a number of possible sources before choosing the most appropriate and reliable prices.

Petitioners rebut respondents' claim that the Department departed from its practice of using, whenever possible, surrogate values that conform to the specific materials used in production. Petitioners argue that it was appropriate for the Department to create a ''basket'' category and assign a single surrogate value for coal for all respondents, given that labels provided by respondents for forms of coal inputs and their respective uses were confusing and unclear.

Petitioners argue that the Department did not depart from its practice of using domestic, tax-exclusive prices in preference to import values. Petitioners maintain that the Department's stated preference for domestic, tax-exclusive prices is conditioned upon the finding of reliable publicly available information. In the present case, petitioners assert that the Department were unable to locate reliable domestic value at the time of the preliminary determination. Petitioners argue that the Department should use the same sources and values for inputs as it did in the preliminary investigation except where amended by material input suggestions made by petitioners in their August 5, 1997 PAI submission and their briefs.

Petitioners argue that the Department should use available import data most contemporaneous with the investigation period if they are otherwise reliable. *See Helical Spring Lock Washers,* 61 FR at 41994, 41996–7.

Petitioners argue that respondents' claims that certain surrogate values are aberrational are unwarranted.

Petitioners agree with respondents that the Department should properly inflate any surrogate values that are not contemporaneous with the period of investigation. Petitioners recommend that the Department use the wholesale price index (WPI) to derive inflators regardless of whether the associated values were reported in Rupees or U.S. dollars. However, petitioners object to the use of United States producer price index (PPI) for inflating dollar-denominated prices, which was used in the preliminary determination. Petitioners argue that since the inflation adjustments are intended to reflect price trends in the surrogate country and not monetary trends in United States, the Department should use inflation indices for the surrogate country, rather than those for the United States. *See e.g. Circular Welded Non-Alloy Steel Pipe from Romania,* 61 FR at 24274.

Department's Position: Both respondents and petitioners are correct in stating that certain general principles have guided the Department's practice in selecting surrogate values. We agree that surrogate values should be products which are as similar as possible to the input for which a surrogate value is needed. Likewise, we normally prefer a fully reliable domestic, tax-exclusive price to an equally reliable import price. We also prefer data (import and domestic) that are more contemporaneous to the POI/ POR to data that are less contemporaneous, and will normally update a value if more data covering additional months within the POI/POR become available to us between the preliminary and the final determination.

When we must use data that are not contemporaneous to the POI or POR, we agree that it should be indexed forward using an appropriate index. We also agree that the Department should not use values which it has found to be ''aberrational,'' and that when the values obtained for the primary surrogate are aberrational, the Department should seek appropriate values in other economies, preferably in those at a similar level of economic development. We also have a long-standing practice of preferring publicly available information to other types of information.

It is important to emphasize, however, that our overarching mandate is to select the ''best'' available data (see 19 U.S.C. 1677b(c)(1)), which involves weighing all of the relevant characteristics of the data, rather than relying solely on one or two absolute ''rules.'' Thus, for example, the most specific data may not be the most contemporaneous, the most reliable, or from the selected surrogate country. There is no set hierarchy for applying the above-stated principles, nor will parties always agree as to the reliability of certain data or the relevance of certain facts or assertions. Thus, the Department must weigh available information with respect to each input value and make a product-specific and case-specific decision as to what the ''best'' surrogate value is for each input. This we have done, to the best of our ability, in this case.

Concerning petitioners' comments regarding the proper inflation of any surrogate values that are not contemporaneous with the POI, we note that the Department agrees with their assertion that we should use WPI for those Indian values denominated in Rupees. However, we disagree with their objection to the use of PPI for inflating dollar-denominated prices, which was the methodology the Department used in the preliminary determination. We have determined that it is a reasonable methodology to use a U.S. index for those values denominated in U.S. dollars, because price indices in the United States would directly impact those prices denominated in the U.S. dollars.

Comment 30: Ministerial Error—Freight for Purchases of Certain Inputs

Petitioners argue that the Department should change the freight charges for purchases of certain inputs which travel by two modes of transportation for Baoshan, Shanghai Pudong and WISCO. Petitioners allege that, in the preliminary determination, the Department incorrectly weight-averaged the costs associated with the modes of transportation.

Respondents did not comment on this issue.

Department's Position: We agree with petitioners with respect to Baoshan and WISCO. For these companies, we have corrected the error for the final determination. However, we disagree with petitioners concerning Shanghai Pudong as we determine that this error is not applicable to Shanghai Pudong. Because this issue involves business proprietary information, please see Concurrence Memorandum for more information.

Company-Specific Comments

1. Anshan

Comment 31: Valuation of Certain Inputs

Anshan argues that the Department should revise the surrogate values for certain inputs (the identity of which constitutes business proprietary information) to reflect the translation corrections provided to the Department in its June 19, 1997 submission. Anshan asserts that the translation corrections accurately describe the value of the grades of the inputs at issue and that the Department confirmed their accuracy during verification.

Petitioners argue that the Department should not revise surrogate valuations to reflect the translation corrections contained in respondent's June 19, 1997 submission because the translation corrections constitute untimely and unsolicited information, and therefore should be rejected. If the Department accepts Anshan's representations, petitioners recommend that the Department continue to use the same value for the inputs as was used in the preliminary determination and make adjustments as necessary, according to their chemical descriptions. Petitioners refute respondents' claims that the results of verification sufficiently confirmed the accuracy of the translations. In addition, petitioners argue that the record information relating to the inputs (the identity of which constitutes business proprietary information) suggests that chemical content for certain inputs claimed by respondent are not accurate.

Department's Position: We agree with Anshan. We agree that the corrections concerning this input that Anshan submitted to the Department on June 19, 1997 (prior to the beginning of verification) were timely. Therefore, we disagree with petitioners' contention that the information was untimely and should be rejected. As we indicated in our verification report for Anshan, we found at verification that there were translation problems concerning both the exact name of the input and its chemical identity. However, we examined supporting documentation which indicated and confirmed the chemical composition of the input.

Comment 32: Valuation of Ocean Freight for Input(s) Imported From Market Economy Suppliers

Anshan argues that the Department should calculate ocean freight charges for its purchases of a certain input based on the actual shipping costs incurred.

Petitioners disagree, claiming that the documentation provided by Anshan did not demonstrate the payment was made in market economy currency. Accordingly, petitioners urge the Department to reject the freight rates proposed by Anshan.

Department's Position: We agree with Anshan that we should value ocean freight charges incurred in shipping market economy inputs based on the actual shipping costs incurred. This is consistent with the Department's practice of using the actual prices paid for inputs which were purchased from market economy suppliers and paid for in market economy currency. *See* 19 CFR 351.408(1). We also disagree with petitioners' contention that the documentation provided by Anshan did not demonstrate the payment for the input was in market economy currency. We note that Anshan included copies of invoices and bank statements denominated in U.S. dollars in their June 19, 1997 submission.

Comment 33: Factors for Sintering Plant

Petitioners argue that the Department should use facts available for material, energy, and labor factors for the material preparation workshop in Anshan's sintering plant. Petitioners argue that the verification reports state that Anshan failed to report these factors for the material preparation workshop in the general sintering plant. With respect to the labor component, petitioners recommend that the Department should use labor figures from the firing shop and the mineral concentration shop. For the omitted energy component of this workshop, petitioners urge that the Department should use the highest reported energy consumption (in terms of electricity, natural gas, and each other reported energy factor, per metric ton of plate) for any other shop.

Anshan objects to petitioners' claim that it failed to report factors of production for the general sintering plant. Anshan argues that omission of these factors from its response stems from a misunderstanding during verification about the functions of the materials preparation workshop. Anshan explained that market economy input is processed prior to importation, and does not require further processing by the material preparation workshop. Therefore, the inclusion of the factors for the materials preparation department in Anshan's factors of production would result in double-counting.

Department's Position: We agree with Anshan. As the market economy input is processed prior to importation, and does not require further processing by the material preparation workshop, we would be double-counting if we included in our calculation of normal value the factors of production for the material workshop.

Comment 34: Anshan's Reporting Methodology

Petitioners argue that Anshan's margin must be based entirely on facts available because its reporting methodology does not provide an adequate factual basis for a final determination. Petitioners contend that Anshan's questionnaire responses do not contain information with sufficient product-specificity because, they claim, Anshan's reporting methodology both lacks a meaningful product code system and fails to account for cost variations between products of different widths. Petitioners also identify as another anomaly in factor reporting the lack of CONNUM-specific electricity factors. If the Department chooses to accept Anshan's reporting methodology, petitioners request that any final calculations based thereon must take into account the errors, omissions and inconsistencies discovered at verification.

Anshan, citing *Steel Plate from Korea,* 58 FR at 37176, 37190 (July 9, 1993), argues that petitioners' challenge to Anshan's reporting methodology is unsubstantiated and should be disregarded. Anshan argues its records do not allow for the calculation of width-specific factors of production. Anshan contends its reporting methodology does sufficiently identify the source of production for plates of differing widths.

Further, Anshan charges that petitioners have provided no basis for rejecting the verified methodology used by Anshan to identify the source of the slabs for each type of plate. Anshan argues that it provided a detailed description of the methodology, along with supporting documentation which can trace the source of production of slabs and ingots. Anshan argues, further, that which items the Department examines at verification is something to be decided not by petitioners but by the Department. The Department, they note, does not have to examine every single issue at verification, as long as it is satisfied, that, on the whole, the verification indicates that the response was accurate. *See Silicon Metal from Argentina,* 58 FR at 65336, 65340 (Dec. 14, 1993).

Department's Position: We agree with Anshan. During verification, we noted that Anshan's reporting methodology was not based on width-specific data. Since Anshan did not use a width-specific methodology in the normal

course of business, it would be inappropriate to use facts available because they reported data based on their usual system rather than a width-specific system, unless the system normally used is found to be distortive to the margin calculation. The Department has determined that Anshan reported its factor data using a non-distortive methodology that provided information of sufficient product specificity to support a final determination.

Comment 35: Freight Amounts on SAL Invoices

Petitioners argue that freight charges reported for U.S. sales should be the freight costs paid by the customer, rather than the freight costs incurred by Anshan's affiliate, Sincerely Asia Limited (SAL).

Anshan argues that sections 772(a) and (c) of the Tariff Act requires that freight costs incurred by the Anshan's affiliate, rather than the customer, should be deducted from export price.

Department's Position: We disagree with petitioners. Section 772(c)(2)(A) calls for the export price to be reduced by 'the amount, if any, *included in such price* (emphasis added), attributable to * * * expenses * * * incident to bringing the subject merchandise from the original place of shipment in the exporting country to the place of delivery in the United States.'' Because freight costs paid by the unrelated customer should not be 'included in'' the export price, there is no reason to deduct these from export price.

Comment 36: Labor for Plate Mill, Roughing Mill; Other Sintering Labor and Iron Making

Plate Mill: Petitioners argue that respondent should revise labor factors for plate mill labor to reflect the results of verification.

Anshan agrees that plate mill labor figures should be revised, based on their August 21, 1997 submission, which reflects the number of workers verified by the Department.

Roughing Mill: Petitioners argue that Anshan's labor database for the roughing mill should be rejected because labor figures for that facility could not be verified. Petitioners argue that certain labor for this facility identified by respondents as ''unrelated'' labor should be attributed to subject merchandise. For labor factors for the roughing mill, petitioners urge the Department to use as facts available the highest per-ton labor rate of any other Anshan shop involved in the production of subject merchandise.

Anshan states that roughing mill labor figures should be revised, based on their August 21, 1997 submission, which reflects the number of workers verified by the Department.

Other Sintering Labor: Petitioners argue that the Department should revise other sintering plant labor according to discoveries made at verification, and that the Department should assign sintering plant maintenance to the production of subject merchandise rather than overhead.

Anshan argues that it is not necessary to reclassify any of Anshan's workers. Respondent maintains that Anshan properly identified all of its labor expenses at each relevant production facility, and classified its workers according to the Department's questionnaire instructions; Anshan states, moreover, that the Department verified its reporting methodology.

Iron-Making: Petitioners argue that certain workers that Anshan identified as ''unrelated workers'' in the iron-making plant must be included in labor costs of producing subject merchandise.

Anshan argues that the Department examined its classification of workers at verification and noted the Department found no discrepancy in this regard.

Department's Position: We agree with both respondents and petitioners in part. Anshan provided a detailed description of the functions and job positions for all workers both directly and indirectly involved in the production of subject merchandise. In addition, we verified labor categories at verification.

For the plate mill, we agree with petitioners and Anshan, and have used revised plate mill figures that were based on the results of verification.

For the roughing mill, we found at verification that we were unable to verify the labor calculations submitted in the June 19, 1997 submission, as we could not tie these calculations to supporting summary worksheets examined at verification. Consequently, for the final determination, we have used the highest per-ton labor rate for a mill contained in Anshan's August 21, 1997 submission concerning labor calculations as facts available.

For other sintering labor, we have revised our calculations for the final determination to reflect the results of verification in this category. We disagree with petitioners that we should reclassify sintering plant maintenance to the production of subject merchandise rather than overhead. We examined the labor classifications at verification and found no evidence that Anshan improperly classified sintering plant maintenance workers.

Likewise, for iron-making, we examined Anshan's classification of workers at verification and found no evidence that these workers were improperly classified.

Comment 37: Material Inputs at No. 2 Steelmaking Plant

Petitioners argue that the Department should use facts available for certain ''auxiliary materials'' used at the No. 2 Steelmaking plant that were not reported to the Department, but discovered at verification. Petitioners urge that the Department use the highest consumption rate reported for the material (or similar material) by Anshan or any other respondent at any stage of production.

Anshan disagrees, arguing that the auxiliary materials not included in the reported factors for the No. 2 Steelmaking plant were either refractory materials used in the repair and maintenance of equipment or were used only for the production of non-subject merchandise. Anshan argues that the refractory materials should be considered overhead materials whose costs need not be reported individually because overhead materials are included in the surrogate value for overhead and thus do not require separate factor valuation.

As for other unreported material inputs, Anshan maintains that they were excluded because they were not used in the production of subject merchandise sold by Anshan in the United States during the investigation period.

Department's Position: We agree, in part, with both Anshan and petitioners. We agree with Anshan that some of their ''auxiliary materials'' are properly classified as refractory materials, and thus are part of overhead.

However, for certain other inputs, we agree with petitioners. There is no evidence on the record to confirm the accuracy of Anshan's contention that the five unreported inputs other than refractory materials were used only for the production of non-subject merchandise. We were unable to find supporting documentation either in the verification report, verification exhibits or questionnaire responses to confirm that these inputs were only used for the production of non-subject merchandise. Consequently, since Anshan did not report these factors, we have applied facts available for these certain inputs used in the Number 2 Steelmaking plant for the final determination.

We have information on consumption levels from Anshan concerning only one of the five unreported inputs. Consequently, as facts available, for three unreported inputs for which we have no information concerning

consumption levels for either the exact input or an input was substantially the same, we applied the consumption rate of the non-reported input for which we have information. We determined that a fourth unreported input was substantially the same as a reported input, and used the consumption value for the reported input. To value each of the five inputs, we used the surrogate value from the *Monthly Statistics* either for the input in question or if no such value was available, for a similar input. Because some of the information associated with this issue is business proprietary, please see the Concurrence Memorandum of October 24, 1997.

Comment 38: By-Product Credits

Petitioners maintain that energy used for additional processing in by-product production should be deducted from the by-product credit. Petitioners maintain that if the respondent is receiving a credit for a processed by-product, the energy used for additional processing must be reported so that its value can be deducted from the credit.

Anshan argues that if energy is deducted from the by-product credit, respondent should still receive a credit for its by-product production.

Department's Position: We agree with both petitioners and respondents. Because additional energy costs are incurred in processing the by-product, energy costs should be deducted from the by-product credits. Therefore, we will deduct energy used for additional processing from the by-product credit. *See* Comment 44.

Comment 39: Credit for a By-Product Produced in Coke Plant

Petitioners argue that Anshan should receive no credit for a by-product which was discovered at verification to have been misreported. If the Department grants a credit for the by-product at issue, petitioners urge that the surrogate value for the by-product be based on the correction made at verification. If the by-product undergoes additional processing, petitioners argue that the by-product credit must be reduced by the value of such additional processing.

Anshan objects to petitioners' claim that the Department should deny it a credit for the by-product at issue. Anshan argues that the Department verified the amount of this by-product generated at the coke plant; thus, Anshan is entitled to a credit for its production of this by-product.

Department's Position: We agree with Anshan. We have revised the by-product credit for the input which was correctly reported at verification.

Comment 40: Raw Materials for Sintering Shop

Petitioners argue that the Department should use facts available for certain raw material inputs in the sintering shop because Anshan failed to provide the Department with understandable, usable data with regard to these raw materials. Petitioners note that Anshan misidentified one gas input used by the sintering plant; therefore, petitioners urge that facts available should be used with regard to this gas input.

Anshan argues that although there was some confusion at verification regarding the correct translation of the input names, there is no justification for using facts available. Anshan notes that both petitioners and respondent appear to agree concerning the type of materials in question. Consequently, Anshan argues that these materials are already included in overhead and to include them again as raw materials would result in double counting.

Department's Position: We disagree with petitioners that the Department should use facts available for these raw materials. While it was true that we encountered difficulties at verification concerning the proper translation of these items, we were able to examine supporting documentation concerning the input. Consequently, we disagree with petitioners' assertion that Anshan did not provide understandable, usable data with regard to these raw materials. Because the details of this issue are business proprietary, please see the Concurrence Memorandum for a more complete discussion of this issue.

Comment 41: Moisture Content of a Certain Factor

Petitioners allege that it was inappropriate for Anshan to strip out moisture content of a certain input. Petitioners urge the Department to inflate the value to obtain a weight based equivalent to the weight basis used for the matching surrogate value.

Anshan argues that it would be improper and highly distortive for the Department to inflate the reported factor in the manner proposed by petitioners.

Department's Position: We agree with respondent. As the details underlying this comment are business proprietary, please see the Concurrence Memorandum.

Comment 42: Ministerial Errors

Petitioners argue that the Department should correct certain ministerial errors in its preliminary determination as to Anshan pertaining to ocean freight, transportation surrogate values, and foreign inland freight.

First, with respect to ocean freight, petitioners note that a ministerial error in the SAS program inadvertently truncated a data field used in the calculations of the actual ocean freight rate paid on an invoice-specific basis for a market economy carrier. Petitioners also note that the SAS program failed to deduct freight charges for certain invoices.

Second, with respect to transportation surrogate values for foreign inland freight, petitioners note that the inflator the Department used to develop the transportation surrogate value is incorrect. According to petitioners, the truck transportation rate for Anshan should be changed from $0.02km/MT to the $0.03/km/MT, which is the value cited in the cable that is the source of the surrogate value, and which is the value used for the other respondents.

Third, with respect to foreign inland freight, petitioners claim that the Department inadvertently applied the surrogate freight rate for truck to certain foreign inland freight factors for which the proper transportation freight rate should be that for train.

Fourth, with respect to the freight expense incurred for fuel oil, petitioners argue that the freight charge for fuel oil which is brought to Anshan by truck should be revised from $0.20/MT to $0.03/km/MT, to conform with the value cited in the cable which is the source of the surrogate value used.

Anshan had no comment with respect to the alleged ministerial errors identified by petitioners.

Department's Position: We agree with petitioners as to all of the above ministerial errors and have made appropriate corrections for the final determination.

2. BAOSHAN

Comment 43: Product Specificity

Petitioners argue that Baoshan's margin must be based on facts available because its reporting methodology, even if faithfully followed, does not provide an adequate factual basis for a final determination. Petitioners claim that the information reported by Baoshan, even if verified, does not provide an adequate basis for calculation of a dumping margin, largely because of a lack of product specificity. They argue that verification of an inadequate database does not transform it into an adequate database.

Petitioners argue that Baoshan's factor information cannot be used because it is not product-specific. Petitioners claim that Baoshan's cost models and reporting of U.S. sales do not make distinctions on a proper basis.

Petitioners claim that verification did not resolve these problems; instead, it only confirmed that Baoshan applied a flawed methodology. Petitioners argue that Baoshan's margin in the final determination should be based on neutral facts available. For a more detailed discussion of this issue, please see Baoshan's Factor Value Memorandum.

Baoshan argues that the information it reported was as product specific as possible. Moreover, Baoshan argues that this information was fully disclosed in Baoshan's February 14 and April 14, 1997 submissions as well as during verification. Baoshan states that the Department never asked it to revise its calculations to make them more product-specific than its records allowed. Accordingly, Baoshan argues, there is no basis for rejecting the information it has submitted.

Department's Position: We agree with Baoshan. The Department verified that Baoshan reported its factors of production in a manner as product-specific as possible. The Department has determined that using a database that conforms to Baoshan's records kept in the normal course of business is a more reasonable reporting methodology and produces less distortive results than would follow from the use of a constructed reporting methodology that deviates from Baoshan's records.

Comment 44: Further Processing of By-Products

Petitioners state that, in the verification report for Baoshan, the Department notes that one of the reported by-products was further refined to produce two other by-products. Petitioners argue that, as with all other by-products resulting from all other processes (regardless of the respondent involved), the Department must ensure that any surrogate value given as a credit for any by-product actually matches the by-product of the plate production process, rather than some further refined product. Petitioners claim that if the Department cannot match the actual by-product of the plate production process, but can only find a surrogate value for the further-processed material, then that surrogate value must be offset by the value of further processing. Petitioners argue that where the respondent has not provided sufficient information to calculate the offset in such circumstances, the by-product credit should be denied.

Baoshan did not comment on this issue.

Department's Position: We agree with petitioners. As the Department noted in its verification report for Baoshan, one of its by-products was further refined to produce two other by-products. The Department also noted that Baoshan did not report the factors involved in the further refinement. It is the Department's policy to only grant by-product credits for by-products actually produced directly as a result of the production process. A respondent must report the factors associated with the further refining of a by-product if it wishes to receive a credit for the further refined product. Because Baoshan failed to report these factors, therefore, we are only granting a credit for the one by-product directly produced in the production process.

Comment 45: Inconsistencies Discovered at Verification

Petitioners argue that the Department should correct all inconsistencies discovered at verification. Petitioners state that proper surrogate values should be matched to each input, in the proportions indicated in the verification report. Petitioners argue that, where the record does not contain a suitable surrogate value, the Department should use, as facts available, the most costly material for each respective process on the record.

Baoshan agrees that all data discovered at verification to be incorrect should be corrected for the final results. However, Baoshan disagrees with petitioners' suggestion that the Department must assign adverse facts available to value the factors affected by these changes. Baoshan claims that the Department has a statutory obligation to calculate margins as accurately and fairly as possible. Accordingly, Baoshan states, regardless of when the factors information was reported, the Department should assign representative surrogate values.

Department's Position: We agree with Baoshan. It is the Department's policy to assign surrogate values that most closely match the reported factor. We have surrogate values for all the inputs referenced by this comment. Consequently, there is no need for the Department to use facts available for these factors for the final determination. Because this comment involves business proprietary information, please see the Concurrence Memorandum for a more complete explanation.

Comment 46: Freight Reporting

Petitioners argue that the Department found numerous discrepancies in the freight information supplied by Baoshan; therefore, Baoshan's reporting of freight factors is unreliable. Petitioners argue that, as facts available, the Department should use the distance to the most distant supplier for all freight factors. However, petitioners state if the Department does not use facts available for all freight, then it must correct certain ministerial errors relating to freight charges in the preliminary determination. Petitioners allege ministerial errors concerning two factors and the highest calculated freight rate.

Baoshan argues that petitioners misconstrued the Department's verification report. Baoshan argues that the report discusses the proper methodology for calculating freight distances for Baoshan's suppliers of one input. Baoshan claims that, at verification, the Department confirmed that its suppliers each supplied varying quantities of an input during the investigation period—not identical quantities as the Department had presumed in making the freight calculation in the preliminary determination. Baoshan claims that the Department's narrative in its verification report merely reiterates the information that was previously submitted. Baoshan argues that this is not a reason for calculating the freight costs for this input based on facts available.

Baoshan argues that, contrary to petitioners' allegation, Baoshan did provide distances and transportation mode for the input at issue. Baoshan claims the accuracy of this information was confirmed by the Department during verification. Accordingly, Baoshan argues, the Department should use this information for the final determination.

Finally, Baoshan claims that petitioners' explanation of the Department's ministerial errors with respect to freight does not provide the correct calculation of these values. Baoshan argues that the calculation which they submitted in their rebuttal brief should be used.

Department's Position: We agree in part with Baoshan. While there were errors discovered in Baoshan's reported freight factors, the errors were not significant enough to render the information unreliable. We have corrected all of the discovered inconsistencies for this final determination. We disagree, however, that the Department verified that Baoshan received different quantities of one input from different suppliers. Because proprietary information is involved, please see Analysis Memorandum for Baoshan for further discussion of this issue. Because we were unable to rely on Baoshan's freight factor data for one input (for reasons discussed in the Analysis

Memorandum), we have used facts available for freight distances in connection with that factor. As facts available, we will continue to use the same methodology used in the preliminary determination and take a simple average of all of Baoshan's suppliers of this input.

Comment 47: Valuation of a Certain Input

Baoshan argues that a certain input, the identity of which is business proprietary information, should be valued based on the input-specific surrogate value information that has already been submitted on the record.

Department's Position: We agree with Baoshan. Because of the proprietary nature of this issue, see the Concurrence Memorandum.

Comment 48: Packing

Baoshan argues that the Department's preliminary calculation of the cost of packing for Bao Steel's exports contain three errors. (1) The preliminary determination, Baoshan claims, incorrectly calculated packing costs based on reported information for loading materials. (2) The Department's preliminary packing cost calculations used an invented ''estimate'' of the weight of each piece of packing material used by Bao Steel. (3) In the preliminary determination, the Department added an amount for freight costs to the surrogate value for the packing materials used by Baoshan.

Department's Position: We agree in part with Baoshan. At verification, the Department was able to ascertain the actual weight of Baoshan's packing materials. Thus, in the final determination, we have used this value instead of the estimated weight used in the preliminary determination. In addition, we will not add freight to the surrogate value for the materials used for packing because the materials are self-produced. We disagree however, with Baoshan's claim that the Department used information reported for loading materials instead of that reported for packing materials. We used packing labor information from Exhibit D–6 of Baoshan's February 19, 1997 response. Thus, we used the same packing labor information for the final determination.

3. Liaoning/(Wuyang)

Comment 49: Verification of Labor Allocations

Petitioners assert that the document examined at verification ''Corporate Announcement of Organizational Structure'' was not collected as a verification exhibit and does not in itself attest to the accuracy of Wuyang's labor allocations. Petitioners allege that no attempt was made to verify Wuyang's labor allocations by examining company attendance records, payroll ledgers or other employment records. Thus, according to petitioners, those allocations have not been verified and cannot be considered reliable.

Department's Position: We disagree with petitioners. Wuyang's verification report states that, in order to tie together the A–36 allocation calculation for labor, the Department examined the original Ingot-Casting Cost Statement, the Finished Goods Inventory Ledger of the Steelmaking Plant, and the Production Accumulation Report of the Production Office. For steelmaking, the Department tied original payroll records to the total number of employees reported to the Department. The Department tied the total payroll expenses for these same employees to the August and June 1996 payroll ledgers. The Department noted no discrepancies. Thus, petitioners are in error when they state that the Department did not examine employment records and that therefore Wuyang's labor allocations were not verified. Furthermore, the Department is not required to collect particular documents as exhibits to attest that items have been verified to its satisfaction.

Comment 50: Standard Raw Material Factor Consumption Rates

Petitioners argue that Wuyang's raw material consumption rates ignore differences in chemical composition for different products. In addition, petitioners maintain that there is no supporting documentation to substantiate Wuyang's assertion that the material input factors reported are the quantities required to produce a ton of finished product sold on a theoretical weight basis. Petitioners claim that Wuyang's reported factor values are unreliable and unverified and that it failed to act to the best of its ability. Petitioners conclude that the Department should decline to consider Wuyang's raw material factor information and apply facts available.

Liaoning and Wuyang counter petitioners' claim by stating that they fail to recognize that Wuyang's carbon steel plate is produced using scrap steel and that although Wuyang's steel scrap factor inputs are, in fact, identical for each grade of subject merchandise that the company produces, the types of scrap steel used in production differ in chemistry for different grades of merchandise. Liaoning and Wuyang argue that Wuyang's reported material inputs thus account for the differences in inputs required to produce different products and reflect the actual material inputs for each product sold. Liaoning and Wuyang conclude that Wuyang has provided the Department with complete and accurate information, which has been verified without discrepancy. With respect to production on a theoretical weight basis, Wuyang explains that it has allocated actual consumption to theoretical production in a manner similar to the manner the way in which a company uses a standard cost system to allocate actual costs.

Department's Position: We agree with Liaoning and Wuyang. The verification report does not note any discrepancies between what it encountered at verification and what Wuyang reported. With respect to the petitioners' criticism as to Wuyang's use of theoretical weights, we note that Wuyang reported the actual amounts of material inputs required to produce one theoretical ton of finished product. Consequently, for the final determination, there was no need for the Department to make any adjustment to factor or sales amounts due to Wuyang's use of theoretical weight.

Comment 51: Reliability of Labor Allocations

Petitioners state that Wuyang's reported labor input rates are understated and must be rejected. Petitioners conclude that the Department must base the final results for Liaoning and Wuyang on the adverse best information available pursuant to 19 U.S.C. § 1677e(b) and (c). Failing that, the Department must revise Wuyang's data. In addition, petitioners argue that respondent made a clerical error in its labor hour calculations.

Department's Position: We agree with petitioners that Wuyang's reported labor input rates are understated, and we have therefore recalculated those rates. We also agree that there was a clerical error in the labor hours calculation, and have corrected that error for the final determination. Because this issue involves business proprietary information, please see the Concurrence Memorandum for a further discussion of this issue.

Comment 52: Treatment of Heavy Oil, Oxygen and Coal Gas

Petitioners, citing *Sebacic Acid from the People's Republic of China*, 62 FR at 10530 (March 7, 1997), state that, consistent with past practice, heavy oil, oxygen, and coal gas should be treated as direct energy inputs rather than as overhead expenses. Petitioners add that

Wuyang has never provided evidence that heavy oil was not a fuel and that at no time has Wuyang explained how heavy oil was used in the production process.

Liaoning and Wuyang have expressed opposition to the Department's inclusion of heavy oil in energy costs. *See* Wuyang's submission of June 16, 1997. Liaoning and Wuyang state that in the event that the Department disagrees with Wuyang and includes heavy oil in energy costs, the Department should use the revised factor the Department verified. Liaoning and Wuyang add that the Department used facts available to determine Chinese inland freight for heavy oil. If the Department were to value heavy oil as a factor of production rather than including it in overhead, and thus were to require data for calculating freight, the Department should use the freight distance reported in its June 16, 1997 submission according to Liaoning and Wuyang.

Department's Position: We agree in part with both petitioners and respondents. At the preliminary determination we included electricity and coal gas as direct materials as well as heavy oil with freight added (*see* calculation memorandum from case analysts to the file, June 3, 1997). At verification, the Department learned that Wuyang had mistranslated the measure for heavy oil as kilograms when it should have been represented in *jin*, a Chinese unit of measure equivalent to half a kilogram. *See* Memorandum to Edward Yang, Director, Office of AD/CVD Enforcement Office 9, from Elizabeth Patience and Doreen Chen, Analysts, August 5, 1997. However, neither at verification nor at any other time did Wuyang provide evidence that heavy oil was not a fuel or explain how it was used in the production process. We therefore: (1) Used the revised usage factor for heavy oil described in the verification report, (2) included electricity, coal gas and heavy oil as direct energy inputs and (3) used the freight distance Wuyang reported in its June 16, 1997 submission.

Comment 53: Transportation From Factory to Port

Petitioners maintain that Wuyang knew that the subject merchandise it sold to Liaoning was destined for resale in the United States, and Liaoning never took physical possession of the subject merchandise. Accordingly, the surrogate value of the cost of transporting the subject merchandise from the factory to the port of exportation should be deducted from the U.S. price, conclude petitioners, in accordance with the practice described in *Brake Drums and Rotors*, 62 FR at 9160, 9170.

Liaoning and Wuyang state that foreign inland freight should not be deducted from Liaoning's export prices because this expense was not incurred by Liaoning, but rather was incurred by its unaffiliated supplier. They further argue that, at verification, the Department ascertained that Wuyang's factory price included delivery of the merchandise to the seaport where it was shipped to the United States by Liaoning. Respondent argues that in *Titanium Sponge From the Russian Federation: Final Results of Antidumping Duty Administrative Review*, 61 FR at 58525 (November 15, 1996) (''*Titanium Sponge*''), the Department determined that ''when a reseller, not the producer, is considered the exporter, the ''original place of shipment'' is the point from which the reseller shipped the merchandise.'' Respondent concludes that Liaoning's acquisition price thus included all inland freight expenses, and the cost of transporting the subject merchandise from the factory to the PRC seaport should hence be treated as a component of Wuyang's total costs instead of a deduction from the price to the U.S. customer.

Department's Position: We agree with petitioners. In *Brake Drums and Rotors* we explained that it is the Department's ''normal methodology to strip all movement charges, including all foreign inland freight, from the U.S. price being compared to the NME normal value based on factors of production.'' While it is true that in *Titanium Sponge* the Department did not deduct factory-to-port movement charges from the U.S. starting price, and instead included ''in normal value an amount for the inland freight,'' the circumstances in that case were different from those in the current investigation. Specifically, in *Titanium Sponge*, (1) the subject merchandise produced in an NME country was sold to an exporter located in a market economy without knowledge on the part of the producer that the United States was the ultimate destination for the merchandise, and (2) the exporter took physical possession of the subject merchandise. Liaoning is not located in a market economy; therefore the actual price it paid to Wuyang, which also is not a market economy firm, is not relevant. (Furthermore, Liaoning's supplemental section B questionnaire response states that ''Liaoning does not hold any inventory of the subject merchandise prior to export''). The expense incurred to transport the steel to the port is part of the cost of the U.S. sale and the factory was the original place of shipment for the sale. Thus the Department has continued to deduct the surrogate value of the cost of transporting the subject merchandise from the factory to the port of exportation from the U.S. price in its final determination calculations.

4. Shanghai Pudong

Comment 54: Facts Available

Petitioners allege that the verification team's investigation of Shanghai Pudong revealed that the company had been repeatedly misstating and concealing information concerning many critical aspects of this investigation. *See, e.g.*, Verification Report at 1–2 (listing seven of the items that had been misreported by this respondent). Petitioners contend that the consistency and repetition of Shanghai Pudong's omissions and misrepresentations suggest that these were not innocent mistakes, but calculated to obtain results more favorable to Shanghai Pudong, demonstrating its repeated lack of cooperation in providing the requested information. Petitioners argue that Shanghai Pudong's actions in this regard have prejudiced the petitioners and warrant application of adverse facts available.

Shanghai Pudong argues that petitioners' accusation and request for adverse facts available is completely without merit. Shanghai Pudong asserts that the only evidence offered by petitioners of the alleged omissions were errors corrected by Shanghai Pudong at the start of verification. Shanghai Pudong asserts that it went to great lengths to ensure that the information provided to the Department was as accurate and complete as possible and that the Department verified the responses finding only minor errors.

Department's Position: We disagree with petitioners. The errors cited by petitioners were corrected by respondents prior to the start of the Department's verification. In addition, the Department examined the errors in question and determined that they were not large enough or sufficiently different from the previous responses to constitute a new questionnaire response. Consequently, the Department determines that there is no basis rejecting Shanghai Pudong's entire response for the use of total adverse facts available in this situation.

Comment 55: Shanghai Pudong and Shanghai No. 1

Petitioners contend that Shanghai Pudong and Shanghai No. 1, which did not respond to the Department's

questionnaire, should be collapsed by the Department and treated as a single entity because, they allege, both plants are controlled by Shanghai Metallurgical. Petitioners contend that Shanghai Metallurgical is involved in the business operations of Shanghai Pudong and Shanghai No.1. They note that the Department discovered at verification that Shanghai Metallurgical appoints the Chairman of the Board of both Shanghai Pudong and Shanghai No.1. Additionally, petitioners note that all large investments by Shanghai Pudong and Shanghai No. 1 must be approved directly by Shanghai Metallurgical. Petitioners claim that respondents characterization of Shanghai Pudong and Shanghai No. 1 as ''competitors'' is simply preposterous. Petitioners note that there is an annual meeting between Shanghai Metallurgical, Shanghai Pudong and Shanghai No. 1 which includes discussion of business targets, investment and productivity. Petitioners state that no such meetings or discussions pursuant to such meetings could possibly take place between true competitors.

Petitioners also contend that the production facilities of Shanghai Pudong and Shanghai No.1 are not substantially different, thus presenting the possibility of manipulation of price or production. Therefore, that the two companies should be treated as one entity for purposes of calculating an antidumping margin.

Shanghai Pudong asserts that under the provisions of Section 771(33) of the Tariff Act, Shanghai Pudong and Shanghai No. 1 are not affiliated. It states that the two companies are not siblings, spouses, or ancestors/lineal descendants. The two firms, Shanghai Pudong contends, are not officers, directors, partners or employers nor do they control each other or own stock in one another. Shanghai Pudong argues that Shanghai Metallurgical does not exercise control over either it or Shanghai No. 1. Accordingly, they argue, this is not a case of ''[t]wo or more persons directly or indirectly controlling, controlled by, or under common control with, any person'' under the terms of Section 1677(33)(f) of the statute. Consequently, Shanghai Pudong claims there is no basis for finding that Shanghai Pudong and Shanghai No. 1 are affiliated under the statute.

Shanghai Pudong states that it would also be improper to collapse the two companies because of significant differences in their production facilities and capabilities.

Shanghai Pudong further claims that there is no possibility of manipulation of price or production by Shanghai Pudong and Shanghai No.1. It asserts that the two companies are independent entities that do not share any managerial employees or board members. It notes that there are no joint ventures between the companies, and claims that they do not share marketing information—each company makes independent marketing and pricing decisions. They also do not share information regarding production or scheduling. Consequently, Shanghai Pudong asserts, there is absolutely no evidence of any potential for the manipulation of prices or production in the event that Shanghai Pudong and Shanghai No. 1 are not collapsed.

Shanghai Pudong also notes that collapsing it with Shanghai No. 1 for the purposes of calculating costs would directly contradict the Department's past decisions. It claims in the German *Large Newspaper Printing Press* case, the Department acknowledged that the related producers of identical subject merchandise satisfied the normal criteria for collapsing, but nevertheless refused to collapse the companies for the purpose of its cost calculations. *See Notice of Final Determination of Sales at Less Than Fair Value: Large Newspaper Printing Presses from Germany (''LNPPs from Germany'')*, 61 FR 38166, 18188 (July 23, 1996). The Department held that the criteria ''relate to collapsing companies for sales purposes rather than cost.'' Shanghai Pudong claims there is clearly no basis for collapsing it with Shanghai No. 1—competitors who do not have any business dealings with one another—for the purposes of calculating costs.

Department's Position: Petitioners claim that the relationship which Shanghai Pudong and Shanghai #1 share with Shanghai Metallurgical requires that the Department ''collapse'' the two producers based on an analysis under the criteria set forth in *Nihon Cement. See Nihon Cement Co.* v. *United States*, 17 CIT 400 (1993).

We have construed petitioners' claim as a request to examine whether it is appropriate for Shanghai Pudong to be treated a separate entity for purposes of assigning a dumping margin.

The sole reason advanced by petitioners for arguing that Shanghai Pudong should not be given a separate rate is that this result is precluded by Shanghai Metallurgical's alleged control over Shanghai Pudong and Shanghai No. 1.

In NME cases we only assign separate rates to exporters and Shanghai No. 1 did not export to the United States.

As discussed above in Comment 1, we have determined that Shanghai Pudong has met the criteria for separate rates by demonstrating both a *de facto* and a *de jure* absence of government control over its export operations. Shanghai No. 1 has made no such demonstration and therefore is not entitled to a separate rate.

Furthermore, we note that, even if we had conducted a ''collapsing'' analysis, with respect to Shanghai Pudong and Shanghai No.1, the results would have been identical because substantial retooling would be required in order for Shanghai Pudong and Shanghai No. 1 to restructure manufacturing priorities. Finally, we determine that although there is some potential for manipulation of price or production, this potential is not ''significant.'' Because business proprietary information is associated with these conclusions, please see the Concurrence Memorandum for details.

We also note that Shanghai Pudong incorrectly cites Comment 13 of *LNPPs from Germany* for the proposition that the Department will not ''collapse'' producing companies whose sales data it is not using. Because the comment cited involved a narrow issue of averaging the cost of manufacturing the subject merchandise with respect to the respondent company and its affiliate, the question of ''collapsing'' (*i.e.*, treating two firms as a single respondent) was not raised in that case. Therefore, what the Department meant by the last sentence of Comment 13 in *LNPPs from Germany* was that the five collapsing criteria cited by the *LNPPs* respondent referred to ''collapsing companies,'' rather than to decisions solely involved cost averaging.

Comment 56: Unreported Consumption of an Input

Petitioners contend that Shanghai Pudong's consumption and conversion factors for a certain input are incorrect. Petitioners state that information obtained at verification was undocumented and inconsistent with information previously submitted by respondent. Petitioners note that two of Shanghai Pudong's facilities showed a different usage rate per ton of the input. Accordingly, they urge that the Department should base valuation of the input on adverse information available.

Shanghai Pudong argues that petitioners' arguments are flawed and should be disregarded. It notes that the usage per ton of the input varies by facility. In addition, it contends that it did not track the usage of the input in the normal course of business. Consequently, at the request of the Department, Shanghai Pudong

calculated a conversion calculation that yielded the values reported to the Department.

Department's Position: We agree with Shanghai Pudong. We reviewed this issue at verification and found that the usage rate for the input does vary by facility. Consequently, we asked Shanghai Pudong to calculate the conversion factor and amount of the material necessary to produce the input which we examined at verification. Since Shanghai Pudong's methodology was reasonable, we have accepted these values for the final determination. Because this issue involves business proprietary information, please see the Concurrence Memorandum for a more complete explanation.

Comment 57: Transportation Charges for Certain Inputs

Petitioners contend that the Department should use adverse facts available to value transportation charges for a certain input. They argue that, at verification, the Department found that Shanghai Pudong's reported information for the largest suppliers of this input were incorrect. Petitioners argue that, as adverse facts available, the Department should calculate freight charges for this input based on the longest distance and highest volume reported.

Petitioners also urge the Department to use adverse facts available for the transportation distances for four other inputs. Petitioners note that the Department discovered errors at verification with respect to these inputs.

Shanghai Pudong asserts that it attempted to provide support for the input at verification but was not allowed to by the Department. Shanghai Pudong argues that despite the errors uncovered at verification, the information reported was basically accurate and can be used for the final determination.

Concerning the transportation distances for the four other inputs, Shanghai Pudong notes that the Department verified the information and found only minor errors. Shanghai Pudong claims that the Department should follow its established practice and use the verified information in the final determination, citing *Ferrosilicon from Brazil,* 59 FR at 732, 736 (January 6, 1994) and *Sulfur Dyes,* 58 FR at 7537, 7543.

Department's Position: We agree with petitioners in part. We found at verification that Shanghai Pudong incorrectly reported its top ten suppliers for a certain input. The Department examined Shanghai Pudong's documentation and methodology with the assistance of its staff and found it to be incorrect. Consequently, for the final determination, we calculated the freight distances for this input using the longest distance reported for the input.

However, we disagree with petitioners regarding the transportation information supplied for the other four inputs. The Department verified this information and found only minor errors. Consequently, we have determined that it is not necessary to use facts available for the distances for these inputs. Due to the proprietary nature of details concerning this issue, see the Concurrence Memorandum.

Comment 58: Unreported Inputs From Unaffiliated Company

Petitioners contend that, at verification, the Department asked for, but was unable to obtain from Shanghai Pudong, certain information concerning inputs from an unaffiliated company. They claim that certain information was not part of the record and, therefore, the Department should base its calculations on adverse facts available.

Shanghai Pudong argues that the petitioners misrepresent the facts regarding the operations of the unaffiliated company. Shanghai Pudong contends that there is information on the record concerning certain inputs that it was able to obtain from the company. Shanghai Pudong states that for one input, it was unable to obtain the information from the unaffiliated entity. However, it notes that it attempted to fully cooperate with the Department. Further, it claims that petitioners' suggestion for using facts available for this situation is inappropriate because this is not a situation in which an interested party failed to cooperate.

Department's Position: We agree with respondents. Because of the proprietary nature of the details of this issue, see the Concurrence Memorandum.

Comment 59: Gas Inputs

Petitioners contend that Shanghai Pudong misled the Department by not correctly reporting gas inputs that were used in a certain production facility. Petitioners urge the Department to use adverse facts available for these gas inputs.

Shanghai Pudong argues that petitioners misunderstand the production process and have erroneously stated where the inputs are generated. Shanghai Pudong claims that the production facility accounted for the inputs in question in the ''miscellaneous expenses'' category. Shanghai Pudong also notes that, in the normal course of business, the facility only consumed trivial amounts of these inputs. Consequently, Shanghai Pudong did not track these inputs in its normal record keeping system. Therefore, respondents state, there is no need to use facts available in this situation.

Department's Position: We agree with respondent. We found at verification that Shanghai Pudong did use small amounts of certain inputs in a particular facility and that respondent included these inputs in the ''miscellaneous expenses'' of its monthly production report.

Comment 60: Adjustment of Labor Inputs

Petitioners argue that the Department should adjust Shanghai Pudong's reported labor inputs upward to account for the cost factors associated with transporting slabs between Shanghai Pudong's facilities. They contend that, because respondent did not report these factors, the Department should use adverse facts available to calculate labor costs incurred in the transportation process.

Shanghai Pudong asserts that the labor used to move materials between facilities is properly treated as an overhead expense. They further state that they notified the Department that they treated this expense as part of overhead in the supplemental questionnaire response. Shanghai Pudong further notes that the Department never notified Shanghai Pudong that this methodology was incorrect in any way. Shanghai Pudong argues that petitioners' arguments for the use of facts available are incorrect and should be rejected.

Department's Position: We agree with Shanghai Pudong that the labor used to move materials between facilities is properly treated as overhead. We verified and accepted Shanghai Pudong's methodology for reporting the workers involved and the unit with which they are associated.

Comment 61: Assignment of Appropriate Surrogate Values for a Certain Input

Respondents argue that the Department should assign appropriate surrogate values to the two different grades of a certain input used by Shanghai Pudong. They maintain that because the Department discussed usage of different grades at verification and because these two grades vary substantially in market value, the Department should assign appropriate surrogate values to each of the grades actually used in the production process.

Petitioners contend that there is no evidence on the record to support respondents' proposed methodology of

valuing the input by grade. According to petitioners, the Department never verified the quantity and value of the different grades produced or consumed. The new information submitted by respondents should be disregarded as it contains unverified information and unexplained calculations based on the unverified information. Petitioners suggest valuing this input as they suggested in their comment for the relevant surrogate values.

Department's Position: We agree with petitioners that this information was new at verification and represents a major change to the data which had been previously submitted. It has been the Department's practice that if this information constitutes a significant change, the Department may not use this information in the final determination. Failing to report inputs in a timely manner clearly constitutes a major impediment to the investigation. See 19 U.S.C. 1677e((a)(2)(c)). Moreover, by not reporting certain inputs until after the due date for such information, Shanghai Pudong has failed to act to the best of its ability to comply with the Department's requests for timely submissions of information.

However, the Department, in keeping with our position in comment 29 above, agrees that it is our responsibility to value each of the grades of the input separately, to the best of our ability. Therefore, we have valued the two grades reported before verification separately. We are valuing one grade of the input at the market economy price paid by the respondent and we are valuing the other grade of the same input with Indian *Monthly Statistics.* See Shanghai Pudong's factor valuation memorandum for more information on this issue.

Comment 62: Ministerial Errors

Petitioners allege that the Department made certain ministerial errors in the preliminary determination with respect to Shanghai Pudong.

Factor Costs for Certain Inputs: Petitioners argue that the Department should value two inputs based on the production factors submitted by Shanghai Pudong rather than Indian surrogate values. Respondents agree with petitioners that the Department should use its reported factors rather than the values from Indian *Monthly Statistics.*

Transportation Surrogate Values: Petitioners allege that the Department used an incorrect transportation surrogate value for truck freight in the preliminary determination.

Respondents had no comment on this issue.

Freight Error: Petitioners contend the Department incorrectly calculated the freight charges in the preliminary determination. Respondents did not comment on this issue.

Respondents had no comment on this issue.

Freight for a Certain Input: Petitioners argue that the Department should revise its calculation of the freight charges associated with a certain input. Respondents did not comment on this issue.

Department's Position: (a) Factor costs for certain inputs: We have used surrogate values from Indian *Monthly Statistics* for these inputs. (b) Transportation surrogate value: We agree with petitioners and have corrected the error for the final determination. (c) Freight error: We agree with petitioners and have corrected the error for the final determination. (d) Freight for a Certain Input: We agree with petitioners that we incorrectly calculated freight for a certain input in the preliminary determination. However, the ministerial error allegation is irrelevant to the final determination as Shanghai Pudong submitted revised transportation distances which correct for this error. Because of the proprietary nature of the details of these issues, see the Concurrence Memorandum for a more complete discussion.

5. WISCO

Comment 63: Facts Available: Certain Factors

Petitioners argue that, because certain factor inputs were misreported or withheld and only discovered at verification, the Department should apply adverse facts available for these inputs. In particular, they contend that WISCO did not report the inputs of certain factors at particular stages of production. Second, they argue that WISCO misreported the amount of by-product electricity generated at a certain stage of production. Additionally, they contend that WISCO misreported certain by-products. Finally, they argue that WISCO failed to report distances for certain material inputs. They contend that this misreporting constitutes a significant impediment to this investigation and as such, the Department should apply adverse facts available in making its final determination. See 19 U.S.C. 1677e ((a)(2)(c)), 19 U.S.C. 1677e (b), and 19 U.S.C. 1677m(e) (1996).

WISCO asserts that the errors discovered at verification were minor in nature and did not impede the investigation. It contends that the Department typically uses information to which minor correction have been made in its final determination.

Department's Position: We agree with WISCO in part. We found that five of the six errors that the Department discovered at verification were minor in nature and do not justify the use of adverse facts available. Our review of these five errors indicates that they were caused by oversight or clerical error on the part of WISCO. Consequently, we disagree with petitioners' assertion that these errors clearly constituted a significant impediment to this investigation or that they proved that WISCO failed to act to the best of its ability to comply with a request for information. We note that it has been the Department's position in the past to accept such changes for the final determination of an antidumping investigation. *See, e.g., Ferrosilicon from Brazil*, 59 FR at 736; *Sulfur Dyes*, 58 FR at 7543.

However, we agree with petitioners that one of the six errors indicated that WISCO did not report the inputs of certain factors at particular stages of production. Therefore, for these inputs we have applied facts available for the final determination. Because this involves proprietary information, please see the Concurrence Memorandum for a more complete explanation.

Comment 64: By-Product Credits

Petitioners contend that the Department should reject WISCO's claimed credits for by-products at a the coke-making facility. They allege that, at verification, the Department discovered that many of the agents used to further process a certain by-product into other by-products are listed on WISCO's production reports but were not reported to the Department. Additionally, they argue that the Department should not allow the offset because the claimed by-products require further processing. For this reason, they argue that the Department should apply facts available and deny any credit for these by-products, relying on 19 U.S.C. 1677e(a) and (b).

Respondents argue that petitioners' arguments appear to be based on a basic misunderstanding of WISCO's reporting of factors used and products produced at WISCO's coke-making facility. WISCO maintains that almost all of the factors used to process the by-products of the coke-making facility were included in the reported factors of production and that the minor reporting errors discovered during verification regarding factors used in the coke-

making facility consisted of the omission of certain inputs used to process a by-product. It contends that it told the Department during verification that only a few inputs are consumed during processing. Therefore, WISCO argues that the only relevant omissions of factors in the particular facility were the quantities of certain inputs used in the processing of the by-product. Furthermore, they assert that the verification report indicates that these quantities were reported in the production records provided to the Department during verification and are included in the record in Verification Exhibit W–24. WISCO urges the Department to use this verified information to determine the quantity of inputs at the facility.

Department's Position: We agree with petitioners in part. The Department noted in its verification report that ''WISCO did not report the factors used to further process [the inputs]. In fact, many of the agents used to refine [the inputs] are listed on the production reports, but were not reported by respondent.'' The Department only discovered these factors in examining the production reports at the beginning of verification, because WISCO did not submit this information prior to verification. It is the Department's general policy to only grant by-product credits for by-products actually produced directly as a result of the production process. A respondent must report the factors associated with the further refining of a by-product if they wish to receive a credit for the further refined product. Even though these factors were in the production reports, WISCO failed to report these factors to the Department. Therefore, we have denied any credit for these by-products for the final determination. Because this issue involves business proprietary information, please see the Concurrence Memorandum for more information.

Comment 65: Facts Available

Petitioners contend that market economy purchases of certain inputs should be assigned adverse facts available because the company was unable, at verification, to provide invoices for the purchases. *See Persico Pizzamiglio S.A.* v. *United States,* 18 CIT 299, 305 (1994), 19 U.S.C. 1677m(i), and 19 U.S.C. 1677e (1988). In addition, they argue that the domestically purchased input should be assigned facts available for this company due to the company's failure to report consumption of these inputs until after the questionnaire deadline. As facts available, they argue that the Department should assign the highest surrogate value on the record to each purchase.

Respondents maintain that, even though they were unable to provide invoices to substantiate their market economy purchases of certain inputs, they did provide the Department with copies of the relevant contracts, which contained the price and the terms of sale, and Chinese Government Customs (CCIB) forms showing the quantities imported. They contend that all relevant information regarding WISCO's market economy purchases of these inputs were verified by the Department and should be used in the final determination.

Department's Position: We agree with petitioners that we should assign adverse facts available to market economy purchases of inputs at issue. We found at verification that WISCO was unable to provide invoices for the purchases of these inputs. We did examine the terms of sale based on the contracts and the CCIB forms. The CCIB forms do not include prices, and while the contract show the original arrangements, they may not reflect the prices ultimately paid. This is why the Department relies on invoices reflecting the amount actually billed and the currency in which payment was required. These invoices should be available to WISCO, and WISCO's failure to produce them casts doubt on its assertion that the contract terms were final. For the final determination, we are using, as facts available, a single surrogate value from Indian *Monthly Statistics* for these inputs. Because this issue and our calculation of adverse facts available involves business proprietary information, please see the Concurrence Memorandum for a more complete explanation of the issue and our methodology.

Comment 66: Financial Records

Petitioners, citing *Ansaldo Componenti, S.p.A.* v. *United States, 628* F. Supp. 198, 204 (CIT 1986) argue that the Department should apply adverse facts available because WISCO failed to provide certain financial records requested by the Department in the supplemental questionnaire. *See also* 19 U.S.C. 1677e(a).

WISCO claims that, although it did decline to submit copies of these documents due to legitimate business concerns, this decision did not impede the course of the investigation. In addition, WISCO states that the Department did not inform it that its response was deficient in any way. WISCO maintains that, in non-market economy cases, issues regarding the actual profits earned by non-market economy producers and regarding its actual non-operating income and expenses are not relevant to the investigation. Instead, this information is subsumed in the SG&A expense rate and the profit rate that are obtained from a surrogate country for use in the Department's normal value calculations. Therefore, WISCO argues that adverse facts available is not warranted in this case.

Department's Position: We agree with respondents that, although WISCO did not provide the requested financial reports, it did provide a sufficient explanation of why this information is considered sensitive. We also determined that the information contained in the financial reports was not necessary to the investigation and, therefore, WISCO's failure to provide it did not impede the course of the investigation. Consequently, we disagree with petitioners claim that we should use adverse facts available for WISCO based on this issue. Because this issue involves business proprietary information, please see the Concurrence Memorandum for a more complete explanation.

Comment 67: Product Specificity

Petitioners contend that the Department should reject WISCO's claim that it is unable to report certain input factors based on width and other characteristics. They argue that, in fact, other information WISCO submitted on the record suggests that WISCO could have reported these characteristics. Accordingly, petitioners urge the Department to apply adverse facts available.

WISCO maintains that it properly answered the Department's March 12, 1997 supplemental questionnaire on this issue and explained therein why width cannot be a distinguishing factor for WISCO in the assignment of control numbers. The Department, they argue, did not notify WISCO that its response was deficient in any way and at verification, the Department examined WISCO's production records and verified that its descriptions were correct.

Department's Position: We agree with WISCO that its response to the supplemental questionnaire was sufficient to explain why WISCO was unable to report input factors based on certain characteristics. At verification, we examined WISCO's records and found them to be consistent with the response. Therefore, we disagree with petitioners' claim that the Department should use facts available for this issue.

Comment 68: Adjustment of Labor Inputs

Petitioners argue that the Department should adjust WISCO's reported labor inputs upward to account for the significant materials handling costs associated with transporting materials and equipment between WISCO's facilities. They contend that, because labor may play a more significant role in the transportation process than is indicated by WISCO's current allocation methodology, the Department, using adverse facts available, should calculate labor and other costs incurred in the transportation process and use this information to adjust upward the labor factor usage rates. See 19 U.S.C. 1677b(c)(3).

WISCO asserts that the labor used to move materials between facilities is properly treated as an overhead expense. It further states that the Department verified that the bulk of the materials are transported between facilities using conveyor belts and pipelines and, therefore, petitioners' assertion that the labor costs associated with the transportation of material is significant is factually incorrect. Furthermore, WISCO maintains that it has a separate transport unit that is responsible for movement of materials and equipment and it is not possible to link specific inputs used in the transport unit to the production of only subject merchandise. WISCO argues that, even if the Department decided to adjust WISCO's labor factors to account for labor employed in the internal transport unit, the adjustment suggested by petitioners is inappropriate because petitioners suggest that the Department base its labor adjustment on the surrogate value for train transportation. WISCO argues that there is no explanation for why the Department should link a surrogate value for rail freight and labor costs associated with internal shipment of materials within WISCO's facilities. WISCO argues that petitioners' arguments should be rejected.

Department's Position: We agree with WISCO that the labor used to move materials between facilities is properly treated as overhead, based on our observations at verification. In addition, we verified and accepted WISCO's methodology for reporting workers involved in moving material between facilities and the unit with which they are associated.

Comment 69: Ministerial Error—River Freight

Petitioners contend that the Department made a ministerial error in valuing river freight in the preliminary determination and should correct it in the final determination. WISCO did not comment on this issue.

Department's Position: We agree with petitioners that there was a ministerial error in the portion of the SAS program used for valuing river freight in the preliminary determination. We have corrected this error for the final determination. *See* Comment 25 above.

Suspension of Liquidation

On October 24, 1997, the Department signed a suspension agreement with the Government of the PRC suspending this investigation. Therefore, we are instructing Customs to terminate the suspension of liquidation of all entries of cut-to-length carbon steel plate from the PRC. Any cash deposits of cut-to-length carbon steel plate from the PRC shall be refunded and any bonds shall be released.

On October 14, 1997, we received a request from petitioners requesting that we continue the investigation. We received a separate request for continuation from the United Steelworkers of America, an interested party under section 771(9)(D) of the Act on October 15, 1997. Pursuant to these requests, we have continued and completed the investigation in accordance with section 734(g) of the Act. We have found the following margins of dumping:

Weighted-average manufacturer/exporter	Margin (percent)
Anshan (AISCO/Anshan International/Sincerely Asia Ltd.)	30.68
Baoshan (Bao/Baoshan International Trade Corp./Bao Steel Metals Trading Corp.)	34.44
Liaoning	17.33
Shanghai Pudong	38.16
WISCO (Wuhan/International Economic and Trading Corp./Cheerwu Trader Ltd.)	128.59
China-wide Rate	128.59

China-Wide Rate

The China-wide rate applies to all entries of the subject merchandise except for entries from exporters that are identified individually above.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. As our final determination is affirmative, the ITC will determine, within 45 days, whether these imports are causing material injury, or threat of material injury, to an industry in the United States.

On October 24, 1997, the Department entered into an Agreement with the Government of the PRC suspending this investigation. Pursuant to Section 734(g) of the Act, petitioners, Liaoning and Wuyang have requested that this investigation be continued. If the ITC's final determination is negative, the Agreement shall have no force or effect and the investigation shall be terminated. *See* Section 734(f)(3)(A) of the Act. If, on the other hand, the Commission's determination is affirmative, the Agreement shall remain in force but the Department shall not issue an Antidumping duty order so long as (1) the Agreement remains in force, (2) the Agreement continues to meet the requirements of subsection (d) and (l) of the Act, and the parties to the Agreement carry out their obligations under the Agreement in accordance with its terms. *See* Section 734(f)(3)(B) of the Act.

This determination is published pursuant to section 735(d) of the Act.

Dated: October 24, 1997.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 97–30393 Filed 11–19–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Evaluation of State Coastal Management Programs and National Estuarine Research Reserves

AGENCY: Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration (NOAA), DOC.

ACTION: Notice of availability of evaluation final findings.

SUMMARY: Notice is hereby given of the availability of the final evaluation findings for the Alabama, Louisiana, Mississippi, North Carolina, Washington, and American Samoa Coastal Management Programs, and the Apalachicola (Florida), and Rookery Bay (Florida) National Estuarine Research Reserves (NERRs). Sections 312 and 315 of the Coastal Zone Management Act of 1972 (CZMA), as amended, require a continuing review of the performance of coastal states with respect to approved coastal management programs and the operation and management of NERRs.

The States of Alabama, Louisiana, North Carolina, and Washington, and the Territory of American Samoa were found to be implementing and enforcing their Federally approved coastal management programs, addressing the national coastal management objectives identified in CZMA Section 303(2)(A)–(K), and adhering to the programmatic terms of their financial assistance awards. The State of Mississippi was found to be not fully adhering to its approved coastal zone program and is not implementing and enforcing the program in a satisfactory manner.

Apalachicola and Rookery Bay NERRs were found to be adhering to programmatic requirements of the NERR System. Copies of these final evaluation findings may be obtained upon written request from: Vickie Allin, Chief, Policy Coordination Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, 10th Floor, Silver Spring, Maryland 20910, (301) 713–3087x126.

(Federal Domestic Assistance Catalog 11.419, Coastal Zone Management Program Administration)

Dated: November 14, 1997.

Nancy Foster,

Assistant Administrator.

[FR Doc. 97–30554 Filed 11–19–97; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Advisory Committee on Public Interest Obligations of Digital Television Broadcasters; Notice of Open Meeting

November 20, 1997.

ACTION: Notice is hereby given of a meeting of the Advisory Committee on Public Interest Obligations of Digital Television Broadcasters, created pursuant to Executive Order 13038.

SUMMARY: The President established the Advisory Committee on Public Interest Obligations of Digital Television Broadcasters (PIAC) to advise the Vice President on the public interest obligations of digital broadcasters. The Committee will study and recommend which public interest obligations should accompany broadcasters' receipt of digital television licenses. The President designated the National Telecommunications and Information Administration to provide secretariat services for the Committee.

AUTHORITY: Executive Order 13038, signed by President Clinton on March 11, 1997.

DATES: The meeting will be held on Friday, December 5, 1997 from 9:00 a.m. until 5:30 p.m.

ADDRESSES: The meeting is scheduled to take place in the Lounge of the Export-Import Bank of the United States, 11th Floor, 811 Vermont Avenue, N.W., Washington, D.C. 20571. This location is subject to change. If the location changes, another **Federal Register** notice will be issued. Updates about the location of the meeting will also be available on the Advisory Committee's homepage at www.ntia.doc.gov/pubintadvcom/pubint.htm or you may call Karen Edwards at 202–482–8056.

FOR FURTHER INFORMATION CONTACT: Karen Edwards, Designated Federal Officer and Telecommunications Policy Specialist, at the National Telecommunications and Information Administration; U.S. Department of Commerce, Room 4716; 14th Street and Constitution Avenue, N.W.; Washington, DC 20230. Telephone: 202–482–8056; Fax: 202–482–8058; E-mail: piac@ntia.doc.gov.

Media Inquiries: Please contact Paige Darden at the Office of Public Affairs, at 202–482–7002.

Agenda

Friday, December 5

Opening remarks
Briefings on the perspectives and experiences of the public interest and broadcasting communities, and on digital technology
Public Comment
Committee Business
Closing Remarks

This agenda is subject to change. For an updated, more detailed agenda, please check the Advisory Committee homepage at www.ntia.doc.gov/pubintadvcom/pubint.htm.

Public Participation: The meeting will be open to the public, with limited seating available on a first-come, first-served basis. This meeting is physically accessible to people with disabilities. Any member of the public requiring special services, such as sign language interpretation or other ancillary aids, should contact Karen Edwards at least five (5) working days prior to the meeting at 202–482–8056 or at piac@ntia.doc.gov. Please bring a form of picture identification such as a driver's license or passport for clearance into the building on the day of the meeting.

Any member of the public may submit written comments concerning the Committee's affairs at any time before or after the meeting. Comments should be submitted through electronic mail to piac@ntia.doc.gov (please use ''Public Comment'' as the subject line) or by letter addressed to the Committee at the address listed below (please place ''Public Comment'' on the bottom left of the envelope).

Guidelines for Public Comment: The Advisory Committee on Public Interest Obligations of Digital Television Broadcasters welcomes public comments. In general, opportunities for oral comment will usually be limited to no more than five (5) minutes per speaker and no more than thirty (30) minutes total at meetings. Written comments received from the public may be mailed (if at least thirty-five (35) paper copies are submitted) or forwarded by email to the committee members prior to the meeting date. However, comments received too close to the meeting date will normally be provided to committee members at the meeting. Written comments received shortly after a meeting will be compiled and sent as briefing material prior to the next meeting.

Obtaining Meeting Minutes: Within thirty (30) days following the meeting, copies of the minutes of the meeting may be obtained over the Internet at www.ntia.doc.gov/pubintadvcom/pubint.htm, by phone request at 202–501–6195, or by written request to Karen Edwards; Advisory Committee on Public Interest Obligations of Digital Television Broadcasters; National Telecommunications and Information Administration; U.S. Department of Commerce, Room 4716; 14th Street and Constitution Avenue N.W.; Washington, DC 20230.

Shirl Kinney,

Deputy Assistant Secretary for Communications and Information.

[FR Doc. 97–30546 Filed 11–19–97; 8:45 am]

BILLING CODE 3510–60–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Increase of Guaranteed Access Levels for Certain Cotton and Wool Textile Products Produced or Manufactured in Costa Rica

November 14, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing guaranteed access levels.

EFFECTIVE DATE: November 20, 1997.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these levels, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Uruguay Round Agreements Act.

Upon a request from the Government of Costa Rica, the U.S. Government has agreed to increase the current guaranteed access levels for Categories 347/348 and 447.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 62 FR 66263, published on December 17, 1996). Also see 61 FR 69081, published on December 31, 1996.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 14, 1997.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 24, 1996, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Costa Rica and exported during the twelve-month period which began on January 1, 1997 and extends through December 31, 1997.

Effective on November 20, 1997, you are directed to increase the guaranteed access levels for the following categories:

Category	Guaranteed Access Level
347/348	2,800,000 dozen.
447	18,000 dozen.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 97–30474 Filed 11–19–97; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0066]

Proposed Collection; Comment Request Entitled Professional Employee Compensation Plan

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0066).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Professional Employee Compensation Plan. The clearance currently expires on March 31, 1998.

DATES: Comments may be submitted on or before January 20, 1998.

FOR FURTHER INFORMATION CONTACT: Jack O'Neill, Federal Acquisition Policy Division, GSA (202) 501–3856.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat, 1800 F Street, NW, Room 4037, Washington, DC 20405. Please cite OMB Control No. 9000–0066, Professional Employee Compensation Plan, in all correspondence.

SUPPLEMENTARY INFORMATION:

A. Purpose

OFPP Policy Letter No. 78–2, March 29, 1978, requires that all professional employees shall be compensated fairly and properly. Implementation of this requires a total compensation plan setting forth proposed salaries and fringe benefits for professional employees with supporting data be submitted to the contracting officer for evaluation.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The annual reporting burden is estimated as follows: Respondents, *5,340;* responses per respondent, *1;* total annual responses, *5,340;* preparation hours per response, *.5;* and total response burden hours, *2,670.*.

Obtaining Copies of Proposals

Requester may obtain a copy of the justification from the General Services Administration, FAR Secretariat (VRS), Room 4037, 1800 F Street, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0066, Professional Compensation Plan, in all correspondence.

Dated: November 13, 1997.

Sharon A. Kiser,

FAR Secretariat.

[FR Doc. 97–30425 Filed 11–19–97; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0090]

Proposed Collection; Comment Request Entitled Rights in Data and Copyrights

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0090).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Rights in Data and Copyrights. The clearance currently expires on March 31, 1998.

DATES: Comments may be submitted on or before January 20, 1998.

FOR FURTHER INFORMATION CONTACT: Jack O'Neill, Federal Acquisition Policy Division, GSA (202) 501–3856.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat, 1800 F Street, NW, Room 4037, Washington, DC 20405. Please cite OMB Control No. 9000–0090, Rights in Data and Copyrights, in all correspondence.

SUPPLEMENTARY INFORMATION:

A. Purpose

Rights in Data is a regulation which concerns the rights of the Government, and organizations with which the Government contracts, to information developed under such contracts. The delineation of such rights is necessary in order to protect the contractor's rights to not disclose proprietary data and to insure that data developed with public funds is available to the public.

The information collection burdens and recordkeeping requirements included in this regulation fall into the following four categories.

(a) A provision which is to be included in solicitations where the proposer would identify any proprietary data he would use during contract performance in order that the contracting officer might ascertain if such proprietary data should be delivered.

(b) Contract provisions which, in unusual circumstances, would be included in a contract and require a contractor to deliver proprietary data to the Government for use in evaluation of work results, or is software to be used in a Government computer. These situations would arise only when the very nature of the contractor's work is comprised of limited rights data or restricted computer software and if the Government would need to see that data in order to determine the extent of the work.

(c) A technical data certification for major systems, which requires the contractor to certify that the data delivered under the contract is complete, accurate and compliant with the requirements of the contract. As this provision is for major systems only, and few civilian agencies have such major systems, only about 30 contracts will involve this certification.

(d) The Additional Data Requirements clause, which is to be included in all contracts for experimental, developmental, research, or demonstration work (other than basic or applied research to be performed solely by a university or college where the contract amount will be $500,000 or less). The clause requires that the contractor keep all data first produced in the performance of the contract for a period of three years from the final acceptance of all items delivered under the contract. Much of this data will be in the form of the deliverables provided to the Government under the contract (final report, drawings, specifications, etc.). Some data, however, will be in the form of computations, preliminary data, records of experiments, etc., and these will be the data that will be required to be kept over and above the deliverables. The purpose of such recordkeeping requirements is to insure that the Government can fully evaluate the research in order to ascertain future activities and to insure that the research was completed and fully reported, as well as to give the public an opportunity to assess the research results and secure any additional information. All data covered by this clause is unlimited rights data paid for by the Government.

Paragraph (d) of the Rights in Data-General clause outlines a procedure whereby a contracting officer can challenge restrictive markings on data delivered. Under civilian agency contracts, limited rights data or restricted computer software is rarely, if ever, delivered to the Government. Therefore, there will rarely be any challenges. Thus, there is no burden on the public.

B. Annual Reporting Burden

The annual reporting burden is estimated as follows: Respondents, *1,100;* responses per respondent, *1;* total annual responses, *1,100;* preparation hours per response, *2.7;* and total response burden hours, *2,970.*

C. Annual Recordkeeping Burden

The annual recordkeeping burden is estimated as follows: Recordkeepers, *9,000;* hours per recordkeeper, *3;* and total recordkeeping burden hours, *27,000.*

Obtaining Copies of Proposals

Requester may obtain a copy of the justification from the General Services Administration, FAR Secretariat (VRS), Room 4037, 1800 F Street, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0090, Rights in Data and Copyrights, in all correspondence.

Dated: November 13, 1997.

Sharon A. Kiser,

FAR Secretariat.

[FR Doc. 97–30426 Filed 11–19–97; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Presidential Advisory Committee on High Performance Computing and Communications, Information Technology, and the Next Generation Internet

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and summary agenda for the next meeting of the Presidential Advisory Committee on High Performance Computing and Communications, Information Technology, and the Next Generation Internet. The meeting will be open to the public. Notice of this meeting is required under the Federal Advisory Committee Act. (Pub. L. 92–463).

DATES: December 9–10, 1997.

ADDRESSES: NSF Board Room (Room 1235), National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

PROPOSED SCHEDULE AND AGENDA: The Presidential Advisory Committee will

meet in open session from approximately 8:30 a.m. to noon and 1:00 p.m. to 5:30 p.m. on December 9, 1997, and from 1:00 p.m. to 3:30 p.m. on December 10, 1997. This meeting will include briefings on the budgets of the five CIC R&D Program Component Areas (High End Computing and Computation; Large Scale Networking; High Confidence Systems; Human Centered Systems; and Education, Training, and Human Resources) and briefings by Federal officials on R&D topics of interest to the Committee. Time will also be allocated during the meeting for public comments by individuals and organizations.

FOR FURTHER INFORMATION CONTACT: The National Coordination Office for Computing, Information, and Communications provides information about this Committee on its web site at: *http://www,hpcc.gov;* it can also be reached at (703) 306–4722. Public seating for this meeting is limited, and is available on a first-come, first-served basis.

Dated: November 12, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–30415 Filed 11–19–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary, DoD

ACTION: Notice to Add a System of Records.

SUMMARY: The Office of the Secretary proposes to add a system of records notice to its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on December 22, 1997 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to OSD Privacy Act Coordinator, Records Section, Directives and Records Division, Washington Headquarter Services, Correspondence and Directives, 1155 Defense Pentagon, Washington, DC 20301–1155.

FOR FURTHER INFORMATION CONTACT: Mr. David Bosworth at (703) 695–0970 or DSN 225–0970.

SUPPLEMENTARY INFORMATION: The Office of the Secretary systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on November 5, 1997, to the House Committee on Government Reform and Oversight, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: November 14, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DC3I 01

SYSTEM NAME:

Joint Reserve Intelligence Planning Support System (JRIPSS).

SYSTEM LOCATION:

Mystech, Inc., 5205 Leesburg Pike, Suite 1200, Falls Church, VA 22041–8141.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Members of the Reserve Components having a military intelligence designator and/or who are proficient in speaking a foreign language.

CATEGORIES OF RECORDS IN THE SYSTEM:

Service member's name, Social Security Number, pay grade, reserve component, primary military occupational specialty (MOS), duty MOS, third MOS, fourth MOS, security clearance, language identifier, proficiency level for language, tour experience, academic degree (civilian education), home address, civilian occupation, professional license, home telephone number, home email address, home fax number, business telephone number, business e-mail address, business fax number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 138(b)(3)(A); Deputy Secretary of Defense memo, Subject: Peacetime Use of Reserve Component Intelligence Elements, January 5, 1995; Secretary of Defense memo, Subject: Integration of the Reserve and Active Components, September 4, 1997; and E.O. 9397 (SSN).

PURPOSES(S):

To provide the Joint Staff, Combatant Commands, DoD intelligence organizations, and the Reserve Components a means to more adequately assess the intelligence and language capabilities of Reserve Component personnel and to identify individuals possessing the requisite skills to fulfill operational requirements or missions. To provide individual reservists a means to interact via computer with the database for purposes of correcting and/or updating the recorded data entries.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of the Office of the Secretary of Defense (OSD) compilation of systems of records notices apply to this system.

STORAGE:

Electronic storage.

RETRIEVABILITY:

Records can be retrieved by the individual's Social Security Number, but only the system manager can retrieve using this personal identifier.

SAFEGUARDS:

Records are maintained in a controlled area accessible only to authorized personnel. Entry to these areas is restricted to those personnel with a valid requirement and authorization to enter. Physical entry is restricted by locks and controlled access devices. Access to data base information is restricted to those who require the records in the performance of their official duties, and to the individuals who are the subject of the record.

RETENTION AND DISPOSAL:

Disposition pending.

SYSTEM MANAGER AND ADDRESS:

Office of the Assistant Secretary of Defense (C3I) Intelligence Infrastructure, 6000 Defense Pentagon, Room 2C252, Washington, DC 20301–6000.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to Office of the Assistant Secretary of Defense (C3I) Intelligence Infrastructure, 6000 Defense Pentagon, Room 2C252, Washington, DC 20301–6000.

Requesting individual must submit full name, Social Security Number, date of birth, current address, and telephone number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to Office of the Assistant Secretary of Defense (C3I) Intelligence Infrastructure, 6000 Defense Pentagon, Room 2C252, Washington, DC 20301–6000.

Requesting individual must submit full name, Social Security Number, date of birth, current address, and telephone number.

Individual reservists may access information pertaining to themselves using an alphanumeric password which is issued to the reservist when he/she registers on-line with JRIPPS for purposes of correcting and/or updating recorded data entries.

CONTESTING RECORDS AND PROCEDURES:

The OSD rules for accessing records, for contesting contents and appealing initial agency determinations are published in OSD Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Reserve Component Common Personnel Data System (RCCPDS) and updated information provided by Reservist.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 97–30416 Filed 11–19–97; 8:45 am]

BILLING CODE 5000–04–F

DEPARTMENT OF DEFENSE

Department of The Army

Army Science Board; Notice of Closed Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 18 November 1997.

Time of Meeting: 0830–1130.

Place: Huntsville, AL.

Agenda: The Army Science Board's (ASB) Issue Group Study on ''Technical Maturity of the Aerostat Demonstration Program'' will meet for briefings and discussions on advanced JLENS sensor concepts. This meeting will be closed to the public in accordance with Section 552b(c) of Title 5, U.S.C., specifically paragraph (1) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). The classified and unclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of this meeting. For further information, please contact our office at (703) 695–0781.

Wayne Joyner.

Program Support Specialist, Army Science Board.

[FR Doc. 97–30451 Filed 11–19–97; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Notice of Open Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 21 November 1997.

Time of Meeting: 1200–1600.

Place: Building 1109B, Fort Knox, Kentucky.

Agenda: The Army Science Board (ASB) Issue Group Study on ''Army After Next'' will meet for briefings and discussions of survivability, mobility and lethality issues relevant to the study subject. These meetings will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. For further information, please call our office at (703) 695–0781.

Wayne Joyner,

Program Support Specialist, Army Science Board.

[FR Doc. 97–30468 Filed 11–19–97; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Notice of Open Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 18 & 19 November 1997.

Time of Meeting: 0830–1630, 18 Nov 97; 0830–1430, 19 Nov 97.

Place: Patuxent River Naval Air Station, Maryland

Agenda: The Army Science Board (ASB) Issue Group Study on ''Army Avionics Modernization Methodologies'' will meet for briefings and discussions. The meetings will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. For further information, please call our office at (703) 695–0781.

Wayne Joyner,

Program Support Specialist, Army Science Board.

[FR Doc. 97–30469 Filed 11–19–97; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability of A Novel Multi-Layer Composite Material Manufacturing Process (Co-Injection Resin Transfer Molding) for Exclusive, Partially Exclusive or Non-exclusive Licenses

AGENCY: U.S. Army Research Laboratory.

ACTION: Notice of availability.

SUMMARY: The Department of the Army announces the general availability of exclusive, partially exclusive or non-exclusive licenses relative to a novel multi-layer composite material manufacturing process (co-injection resin transfer molding) as described in the U.S. Army Research Laboratory patent docket# ARL 97–17 and a subsequent patent application to the U.S. Patent and Trademark Office. A licensing meeting is scheduled for Thursday, 29 January 1998, at Aberdeen Proving Ground, MD. Visit http://www.fedlabs.org/ma/pl for technical and registration information. A non-disclosure agreement *MUST* be signed prior to attending the licensing meeting. Licenses shall comply with 35 U.S.C. 209 and 37 CFR 404.

FOR FURTHER INFORMATION CONTACT: Michael D. Rausa, U.S. Army Research Laboratory, Office of Research and Technology Applications, ATTN: AMSRL–CS–TT/Bldg. 434, Aberdeen Proving Ground, Maryland 21005–5425, Telephone (410) 278–5028.

SUPPLEMENTARY INFORMATION: None.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 97–30488 Filed 11–19–97; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Defense Contract Audit Agency

Privacy Act of 1974; Systems of Records

AGENCY: Defense Contract Audit Agency

ACTION: Notice to Amend Record Systems

SUMMARY: The Defense Contract Audit Agency is amending and deleting

systems of records notices in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The amendments will be effective on December 22, 1997 unless comments are received that would result in a contrary determination. The deletions will be effective on November 20, 1997.

ADDRESSES: Send comments to Defense Contract Audit Agency, Information and Privacy Advisor, CMR, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219.

FOR FURTHER INFORMATION CONTACT: Mr. Dave Henshall at (703) 767-1005.

SUPPLEMENTARY INFORMATION: The Defense Contract Audit Agency notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed amendments are not within the purview of subsection (r) of the Privacy Act (5 U.S.C. 552a), as amended, which would require the submission of a new or altered system report for each system. The specific changes to the record systems being amended are set forth below followed by the notices, as amended, published in their entirety.

Dated: November 14, 1997.

L. M. BYNUM,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DELETIONS

RDCAA 152.22

SYSTEM NAME:

Classified Information Nondisclosure Agreement (NdA) *(February 22, 1993, 58 FR 10845).*

Reason: The records in this system are covered under the government-wide system of records notice OPM/GOVT–1, entitled General Personnel Records.

RDCAA 211.11

SYSTEM NAME:

Drug-Free Federal Workplace Records *(February 22, 1993, 58 FR 10846).*

Reason: The records in this system are covered under the government-wide system of records notice OPM/GOVT–5, entitled Recruiting, Examining, and Placement Records.

AMENDMENTS

RDCAA 152.1

SYSTEM NAME:

Security Information System (SIS) *(February 22, 1993, 58 FR 10840).*

* * * * *

PURPOSE(S):

Delete 'To submit data on a regular basis to the DoD Defense Central Index of Investigations (DCII),'.

* * * * *

RDCAA 152.1

SYSTEM NAME:

Security Information System (SIS).

SYSTEM LOCATION:

Primary location: Security Office, Headquarters, Defense Contract Audit Agency, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219.

Decentralized locations: Defense Contract Audit Agency (DCAA) Regional Security Offices. Official mailing addresses are published as an appendix to DCAA's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All DCAA employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records contain name, Social Security Number, date and place of birth, citizenship, position sensitivity, accession date, type and number of DCAA identification, position number, organizational assignment, security adjudication, clearance, eligibility, and investigation data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; E.O. 10450, Security Requirements for Government Employees, as amended; E.O. 12958, Classified National Security Information; and E.O. 9397 (SSN).

PURPOSE(S):

To provide the DCAA Security Office with a ready reference of security information on DCAA personnel.

To submit data on a regular basis to the DoD Defense Central Index of Investigations (DCII).

To provide the DCAA Drug Program Coordinator with a listing of individuals who hold security clearances for the purpose of creating the drug testing pool, from which individuals are randomly chosen for drug testing.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' that appear at the beginning of DCAA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in automated data systems.

RETRIEVABILITY:

Records are retrieved by Social Security Number or name of employee.

SAFEGUARDS:

Automated records are protected by restricted access procedures. Records are accessible only to authorized personnel who are properly cleared and trained and who require access in connection with their official duties.

RETENTION AND DISPOSAL:

Records are retained in the active file until an employee separates from the agency. At that time, records are moved to the inactive file, retained for two years, and then deleted from the system. Hard copy listings and tapes produced by this system are destroyed by burning.

SYSTEM MANAGER(S) AND ADDRESS:

Security Officer, Headquarters, Defense Contract Audit Agency, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Security Office, Headquarters, Defense Contract Audit Agency, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219 or the Regional Security Offices whose official mailing addresses are published as an appendix to DCAA's compilation of systems of records notices.

Individuals must furnish name; Social Security Number; approximate date of their association with DCAA; and geographic area in which consideration was requested for record to be located and identified.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Security Office, Headquarters, Defense Contract Audit Agency, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219 or the Regional Security Offices whose official mailing addresses are published as an appendix to DCAA's

compilation of systems of records notices.

Individuals must furnish name; Social Security Number; approximate date of their association with DCAA; and geographic area in which consideration was requested for record to be located and identified.

CONTESTING RECORD PROCEDURES:

DCAA's rules for accessing records, for contesting contents and appealing initial agency determinations are published in DCAA Regulation 5410.10; 32 CFR part 317; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information, other than data obtained directly from individual employees, is obtained by DCAA Headquarters and Regional Office Personnel and Security Divisions, and Federal Agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

RDCAA 152.2

SYSTEM NAME:

Personnel Security Data Files *(January 19, 1994, 59 FR 2829).*

CHANGES:

* * * * *

SYSTEM LOCATION:

In the second paragraph delete 'of Personnel' and insert 'Human Resources Management Division'.

CATEGORIES OF RECORDS IN THE SYSTEM:

In the first paragraph, insert '(152.2)' between 'One' and 'contains'. Delete 'security investigative questionnaires' between 'applications' and 'requests' and delete 'investigation or' between 'for' and 'security'.

In the second paragraph, insert '(152.3)' between 'Two' and 'contains' and insert 'security investigative questionnaires and' between 'contains' and 'verification'.

In the third paragraph, insert '(152.4)' between 'Three' and 'contains'. Delete 'Federal Personnel Manual' between 'in the' and 'and in' and insert 'Code of Federal Regulations'. Delete 'DCAA Central Clearance Group to the Director, DCAA, and determination by the Director, DCAA' and insert 'WHS/CAF adjudication authority with related documents, former DCAA adjudicative authority documents, and determinations by the Director, DCAA'.

* * * * *

RETENTION AND DISPOSAL:

Add paragraph 'Section three is maintained after separation only if it contains a DCAA unfavorable personnel security determination, or a DCAA favorable personnel security determination, where the investigation or information upon which the determination was made included significant derogatory information of the type set forth in Section 2–200 and Appendix I, DCAAM 5210.1. This information shall be maintained for five years from the date of determination.'

* * * * *

RECORD SOURCE CATEGORIES:

Delete 'of Personnel' and insert 'Human Resources Management Division'.

* * * * *

RDCAA 152.2

SYSTEM NAME:

Personnel Security Data Files.

SYSTEM LOCATION:

Primary location: Headquarters, Defense Contract Audit Agency, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219.

Decentralized locations: Human Resources Management Division, Defense Contract Audit Agency; Human Resources Management Offices and Regional Security Officers at DCAA Regional Offices. Official mailing addresses are published as an appendix to DCAA's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All applicants for employment with Defense Contract Audit Agency (DCAA); all DCAA employees; all persons hired on a contractual basis by, or serving in an advisory capacity to DCAA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Section One (152.2) contains copies of individual's employment applications, requests for, and approval or disapproval of, emergency appointment authority; requests for security clearance; interim and final security clearance certificates.

Section Two (152.3) contains security investigative questionnaires and verification of investigations conducted to determine suitability, eligibility or qualifications for Federal civilian employment, eligibility for assignment to sensitive duties, and access to classified information.

Section Three (152.4) contains summaries of reports of investigation, internal Agency memorandums and correspondence furnishing analysis of results of investigations in so far as their relationship to the criteria set forth in the E.O. 10450, in the Code of Federal Regulations and in Department of Defense and DCAA Directives and Regulations; comments and recommendations of the WHS/CAF adjudication authority with related documents, former DCAA adjudicative authority documents, and determinations by the Director, DCAA.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; E.O. 10450, 10865, and E.O. 12958, Classified National Security Information; and DoD Directive 5105.36 (32 CFR part 387).

PURPOSE(S):

To provide a basis for requesting appropriate investigations; to permit determinations on employment or retention; to authorize and record access to classified information.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' that appear at the beginning of DCAA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

All sections are on paper records stored in file folders.

RETRIEVABILITY:

Folders are filed by file series then by organizational element (DCAA Headquarters or DCAA field activities) and then alphabetically by last name of individual concerned.

SAFEGUARDS:

Records are stored in locked filing cabinets after normal business hours. Records are accessible only to authorized personnel who are properly cleared and trained and who require access in connection with their official duties.

RETENTION AND DISPOSAL:

Records contained in Sections One and Two pertaining to Federal employees and persons furnishing services to DCAA on a contract basis are destroyed upon separation of employees, and upon termination of the contracts for contractor personnel. Records pertaining to applicants are

destroyed if an appointment to DCAA is not made.

Records contained in Section Three are maintained after separation only if it contains a DCAA unfavorable personnel security determination, or a DCAA favorable personnel security determination, where the investigation or information upon which the determination was made included significant derogatory information of the type set forth in Section 2–200 and Appendix I, DCAAM 5210.1. This information shall be maintained for five years from the date of determination.

SYSTEM MANAGER(S) AND ADDRESS:

Security Officer, Headquarters, Defense Contract Audit Agency, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this record system should address written inquiries to the Records Administrator, Defense Contract Audit Agency, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system should address written inquiries to the Records Administrator, Defense Contract Audit Agency, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219.

Written requests for information should contain the full name of the individual, current address and telephone number and current business address.

Acceptable identification, that is, driver's license or employing offices' identification card. Visits are limited to those offices (Headquarters and Regional offices) listed in the official mailing addresses published as an appendix to DCAA's compilation of record system notices.

CONTESTING RECORD PROCEDURES:

DCAA's rules for accessing records, for contesting contents and appealing initial agency determinations are published in DCAA Regulation 5410.10; 32 CFR part 317; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Security Officer and the Director of Human Resources Management Division at Headquarters, DCAA; Chiefs of Human Resources Management Divisions, Regional Security Officers, Chiefs of Field Audit Offices at the DCAA Regional Offices and the individual concerned.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

RDCAA 152.5

SYSTEM NAME:

Notification of Security Determinations *(February 22, 1993, 58 FR 10842).*

CHANGES:

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete '10 U.S.C. 133 and 50 U.S.C. 781'.

* * * * *

RDCAA 152.5

SYSTEM NAME:

Notification of Security Determinations.

SYSTEM LOCATION:

Primary System: Regional Security Offices, Defense Contract Audit Agency Regional Office and Security Control Offices, Defense Contract Audit Institute, 4075 Park Avenue, Memphis, TN 38111–7492. Official mailing addresses are published as an appendix to DCAA's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Defense Contract Audit Agency (DCAA) personnel and applicants for DCAA employment on whom specific security or suitability action must be taken.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records may contain a summary of pertinent security or suitability information; the results of security determinations approved by the Director, DCAA; and directed or recommended actions to be taken at DCAA Regional Office, Field Audit Office or Defense Contract Audit Institute (DCAI) level.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; E.O. 10450, 10865, and E.O. 12958, Classified National Security Information.

PURPOSE(S):

To permit required actions of a suitability or security nature to be taken by appropriate DCAA officials.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' that appear at the beginning of DCAA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

Folders are filed by organizational element, then alphabetically by name of person concerned.

SAFEGUARDS:

Records are accessible only to authorized personnel who are properly cleared and trained and who require access in connection with their official duties. Records are stored in locked filing cabinets after normal business hours.

RETENTION AND DISPOSAL:

Destruction is directed individually in each case upon completion of final security or suitability actions or automatically upon nonappointment of applicants or separation of employees, whichever is earlier.

SYSTEM MANAGER(S) AND ADDRESS:

Security Officer, Headquarters, Defense Contract Audit Agency, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Records Administrator, Defense Contract Audit Agency, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system should address written inquiries to Records Administrator, Defense Contract Audit Agency, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219.

Written requests for information should contain the full name of the individual, current address and telephone number, and current business address.

Personal visits are limited to those offices (Headquarters and 6 regional offices) listed in the appendix to the

agency's compilation of record system notices. For personal visits, the individual should be able to provide some acceptable identification, that is driver's license or employing office's identification card.

CONTESTING RECORD PROCEDURES:

DCAA's rules for accessing records, for contesting contents and appealing initial agency determinations are published in DCAA Regulation 5410.10; 32 CFR part 317; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Results of investigations received from Federal agencies and recommendations for action from appropriate DCAA Headquarters staff elements.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

RDCAA 152.6

SYSTEM NAME:

Regional and DCAI Security Clearance Request Files *(January 19, 1994, 59 FR 2830).*

CHANGES:

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AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete '10 U.S.C. 133 and 50 U.S.C. 781'.

* * * * *

RDCAA 152.6

SYSTEM NAME:

Regional and DCAI Security Clearance Request Files

SYSTEM LOCATION:

Primary System: Security Officers of Defense Contract Audit Agency Regional Offices and Security Control Officers, Defense Contract Audit Institute. Official mailing addresses are published as an appendix to DCAA's compilation of systems of records notices.

Decentralized Segment: Security Officer, Headquarters, Defense Contract Audit Agency, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All applicants for employment with Defense Contract Audit Agency (DCAA); all DCAA employees; all persons hired on a contractual basis by, or serving in an advisory capacity to DCAA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Files contain personnel security data forms submitted by employees and applicants required in the processing of security investigations; requests for various types of security clearance actions; and requests for and approvals/disapprovals of appointments to sensitive positions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; E.O. 10450, 10865, and E.O. 12958, Classified National Security Information; and DoD Directive 5105.36 (32 CFR part 387).

PURPOSE(S):

To prepare necessary paperwork and documentation upon which to base requests to Headquarters, DCAA for appointments to sensitive positions, requests for security investigations, for security clearance and to retain support documents pending approval of appointment and/or granting clearance.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' that appear at the beginning of the DCAA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

Filed alphabetically by last name of individual concerned.

SAFEGUARDS:

Records are accessible only to those authorized personnel required to prepare, review, process, and type necessary documents. Records are stored in locked filing cabinets after normal business hours and are stored in locked rooms and buildings after normal business hours.

RETENTION AND DISPOSAL:

These are transitory files at DCAA Regional Offices and DCAI level and are maintained only during processing and pending final action on requests. Upon receipt of final action taken on request, files are destroyed.

Segments of the system held by the Security Officer, DCAA are destroyed upon separation of the employee or after non-appointment of an applicant.

SYSTEM MANAGER(S) AND ADDRESS:

Security Officer, Headquarters, Defense Contract Audit Agency, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219.

Regional Security Officers, DCAA and Security Control Officers, Defense Contract Audit Institute. Official mailing addresses are published as an appendix to DCAA's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Records Administrator, Defense Contract Audit Agency, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Records Administrator, Defense Contract Audit Agency, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219.

The request should contain the full name of the individual, current address and telephone number, and current business address.

Personal visits may be made but are limited to those offices (Headquarters and 6 Regional Offices) listed in DCAA's official mailing addresses published as an appendix to DCAA's compilation of record system notices. In personal visits, the individual should be able to provide acceptable identification, that is, driver's license or employing offices' identification card.

CONTESTING RECORD PROCEDURES:

DCAA's rules for accessing records, for contesting contents and appealing initial agency determinations are published in DCAA Regulation 5410.10; 32 CFR part 317; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Chiefs of Personnel Divisions and Regional Security Officers at the DCAA Regional Offices; the Manager, Defense Contract Audit Institute and the individual concerned.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

RDCAA 152.7

SYSTEM NAME:

Clearance Certification *(January 19, 1994, 59 FR 2831).*

CHANGES:

* * * * *

SYSTEM LOCATION:

In the second paragraph entitled Decentralized Segment, delete 'of Personnel' and insert 'Human Resources Management Division'.

* * * * *

RDCAA 152.7

SYSTEM NAME:

Clearance Certification.

SYSTEM LOCATION:

Primary location: Regional Security Officers at Defense Contract Audit Agency (DCAA) Regional Offices; Security Control Officers at DCAA Field Audit Offices; Field Detachment and Defense Contract Audit Institute (DCAI). Official mailing addresses are published as an appendix to DCAA's compilation of systems of records notices.

Decentralized locations: Security Officer and Director of Human Resources Management Division at Headquarters, DCAA and Chiefs of Human Resources Management Offices at DCAA Regional Offices. Official mailing addresses are published as an appendix to DCAA's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All DCAA personnel employed by the Agency.

CATEGORIES OF RECORDS IN THE SYSTEM:

Files contain interim and final security clearance and eligibility certificates attesting to type of investigation conducted and degree of access to classified information which is authorized copies, of security acknowledgement certificates supervisor suitability/security statements and special access briefing statements executed by individuals upon being granted security clearances or access to special access information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; E.O. 10450, 10865, and E.O. 12958, Classified National Security Information; and DoD Directive 5105.36 (32 CFR part 387).

PURPOSE(S):

To maintain a record of the security clearance and eligibility status of all DCAA personnel as well as certification of briefings for access to classified information and special access information.

To DoD contractors to furnish notice of security clearance and access authorization of DCAA employees.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' that appear at the beginning of the DCAA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

Retrieved by last name of individual concerned.

SAFEGUARDS:

Records are stored in locked filing cabinets after normal business hours and stored in locked rooms or buildings. Records are accessible only to those authorized personnel required to act upon a request for access to classified defense information.

RETENTION AND DISPOSAL:

Files pertaining to Federal employees and persons furnishing services to DCAA on a contract basis are destroyed upon separation or transfer of employees and upon termination of contractor personnel.

Files of individuals transferring within DCAA are transferred to security control office of gaining element for maintenance.

SYSTEM MANAGER(S) AND ADDRESS:

Security Officer, Headquarters, Defense Contract Audit Agency, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219 and Regional Security Officers in DCAA Regional Offices. Official mailing addresses are published as an appendix to DCAA's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this record system should address written inquiries to the Records Administrator, Defense Contract Audit Agency, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Records Administrator, Defense Contract Audit Agency, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219.

The request should contain the full name of the individual, current address and telephone number, and current business address.

Personal visits may be made but are limited to those offices (Headquarters and Regional Offices) listed in DCAA's official mailing addresses published as an appendix to DCAA's compilation of systems of records notices. In personal visits, the individual should be able to provide acceptable identification, that is, driver's license or employing offices' identification card.

CONTESTING RECORD PROCEDURES:

DCAA's rules for accessing records, for contesting contents and appealing initial agency determinations are published in DCAA Regulation 5410.10; 32 CFR part 317; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Chiefs of Human Resources Management Offices and Regional Security Officers at the DCAA Regional Offices; Chiefs of DCAA Field Audit Offices; the Manager, Defense Contract Audit Institute and the individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

RDCAA 152.17

SYSTEM NAME:

Security Status Master List *(January 19, 1994, 59 FR 2832).*

CHANGES:

* * * * *

RECORD SOURCE CATEGORIES:

Replace 'of Personnel' with 'Human Resources Management Division'.

* * * * *

RDCAA 152.17

SYSTEM NAME:

Security Status Master List.

SYSTEM LOCATION:

Headquarters, Defense Contact Audit Agency, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All employees of DCAA; all persons hired on a contractual basis by or serving in an advisory capacity to DCAA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Record contains type of investigation, date completed, file number, agency which conducted investigation, security clearance data information, name, Social Security Number, date and place of birth, organizational assignment, dates interim and final clearance issued, position sensitivity and related data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; E.O. 10450, 10865, and E.O. 12958, Classified National Security Information; and DoD Directive 5105.36 (32 CFR part 387).

PURPOSE(S):

To maintain a ready reference of security clearances on DCAA personnel, to include investigative data and position sensitivity.

To provide security clearance data to DoD contractors and other Federal agencies on DCAA employees assigned to or visiting a contractor facility or visiting or applying for employment with another Federal agency.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' that appear at the beginning of DCAA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Stored in a card file.

RETRIEVABILITY:

Cards are filed alphabetically by last name of individual concerned for all DCAA regional personnel. Separate file maintained alphabetically by last name of individual concerned for DCAA Headquarters elements.

SAFEGUARDS:

Cards are accessible only to those authorized personnel required to prepare, process, and type necessary documents; and answer authorized inquiries for information contained therein. Cards are stored in locked filing cabinets after normal business hours and are stored in a locked room and building which is protected by a guard force system after normal business hours.

RETENTION AND DISPOSAL:

These cards are destroyed two years after an individual is separated from DCAA.

SYSTEM MANAGER(S) AND ADDRESS:

Security Officer, Headquarters, Defense Contract Audit Agency, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Records Administrator, Defense Contract Audit Agency, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Records Administrator, Defense Contract Audit Agency, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219.

Written requests for information should contain the full name of the individual, current address and telephone number, and current business address.

Personal visits are limited to the Headquarters listed in the appendix to DCAA's compilation of systems of records notices. For personal visits, the individual should be able to provide some acceptable identification, that is driver's license or employing office's identification card.

CONTESTING RECORD PROCEDURES:

DCAA's rules for accessing records, for contesting contents and appealing initial agency determinations are published in DCAA Regulation 5410.10; 32 CFR part 317; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Security Officer, Headquarters, DCAA; Director of Human Resources Management Division, Headquarters, DCAA; Chiefs of Human Resources Management Offices, DCAA Regional offices; Regional Security Officers, DCAA Regional Offices; Manager, DCAI; the individual concerned; and reports of investigation conducted by Federal investigative agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

RDCAA 160.5

SYSTEM NAME:

Travel Orders *(February 22, 1993, 58 FR 10845).*

CHANGES:

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete '10 U.S.C. 133' and add '5 U.S.C. 301, Departmental Regulations'.

* * * * *

RDCAA 160.5

SYSTEM NAME:

Travel Orders.

SYSTEM LOCATION:

Headquarters, Defense Contract Audit Agency, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219; DCAA Regional Offices; and field audit offices, whose addresses may be obtained from their cognizant regional office. Official mailing addresses are published as an appendix to the DCAA's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any DCAA employee who performs official travel.

CATEGORIES OF RECORDS IN THE SYSTEM:

File contains individual's orders directing or authorizing official travel to include approval for transportation of automobiles, documents relating to dependents travel, bills of lading, vouchers, contracts, and any other documents pertinent to the individual's official travel.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 5 U.S.C., Chapter 57; and DoD Directive 5105.36 (32 CFR part 387).

PURPOSE(S):

To document all entitlements, authorizations, and paperwork associated with an employee's official travel.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' that appear at the beginning of DCAA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

By fiscal year and alphabetically by surname. May be filed in numerical sequence by travel order number.

SAFEGUARDS:

Under control of office staff during duty hours. Building and/or office locked and/or guarded during nonduty hours.

RETENTION AND DISPOSAL:

Records are destroyed after 4 years.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Director, Resources, Headquarters, Defense Contract Audit Agency, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219; Regional Directors, DCAA; and Chiefs of Field Audit Offices, whose addresses may be obtained from their cognizant regional office. Official mailing addresses are published as an appendix to DCAA's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Records Administrator, Defense Contract Audit Agency, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Records Administrator, Defense Contract Audit Agency, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219.

The request should contain the full name of the individual, current address and telephone number, and current business address.

Personal visits may be made to those offices listed in DCAA's official mailing addresses published as an appendix to DCAA's compilation of systems of records notices. In personal visits, the individual should be able to provide acceptable identification, that is, driver's license or employing offices' identification card.

CONTESTING RECORD PROCEDURES:

DCAA's rules for accessing records, for contesting contents and appealing initial agency determinations are published in DCAA Regulation 5410.10; 32 CFR part 317; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Administrative offices; personnel offices; servicing payroll offices; employee.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

RDCAA 201.01

SYSTEM NAME:

Individual Access Files *(February 22, 1993, 58 FR 10846).*

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete 'Personnel and Security Division' and insert 'Human Resources Management Division'.

NOTIFICATION PROCEDURE:

Delete 'Personnel and Security Division' and insert 'Human Resources Management Division'.

RECORD ACCESS PROCEDURES:

Delete 'Personnel and Security Division' and insert 'Human Resources Management Division'.

* * * * *

RDCAA 201.01

SYSTEM NAME:

Individual Access Files.

SYSTEM LOCATION:

Headquarters, Defense Contract Audit Agency, Human Resources Management Division, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

DCAA personnel, contractor employees, and individuals granted or denied access to DCAA activities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Documents relating to the request for authorization, issue, receipt, surrender, withdrawal and accountability pertaining to identification cards, to include application forms, photographs, and related papers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; DoD Directives 5200.8 and 5105.36 which assign to the Director, DCAA the responsibility for protection of property and facilities under his control.

PURPOSE(S):

Information is maintained and used to adequately control access to and movement on DCAA activities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' that appear at the beginning of the DCAA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders, application cards, and index cards.

RETRIEVABILITY:

Retrieved alphabetically by name.

SAFEGUARDS:

Records are maintained in areas accessible only to authorized DCAA personnel.

RETENTION AND DISPOSAL:

Records are destroyed one year after termination or transfer of person granted access, except that individual identification cards and photographs will be destroyed upon revocation, expiration or cancellation.

SYSTEM MANAGER(S) AND ADDRESS:

Headquarters, Defense Contract Audit Agency, Human Resources Management Division, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Headquarters, Defense Contract Audit Agency, Human Resources Management Division, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Headquarters, Defense Contract Audit Agency, Human Resources Management Division, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219.

Written requests for information should contain the full name, current address and telephone numbers of the individual. For personal visits, the individual should be able to provide some acceptable identification, that is, driver's license, employing office identification card, and give some verbal information that could be verified with the file.

CONTESTING RECORD PROCEDURES:

DCAA's rules for accessing records, for contesting contents and appealing initial agency determinations are published in DCAA Regulation 5410.10; 32 CFR part 317; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individuals applying for identification cards and security personnel.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

RDCAA 240.3

SYSTEM NAME:

Legal Opinions *(February 22, 1993, 58 FR 10847).*

CHANGES:

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete 'problems' between 'personnel' and 'that' and insert 'issues'.

* * * * *

RDCAA 240.3

SYSTEM NAME:

Legal Opinions.

SYSTEM LOCATION:

Office of Counsel, Headquarters, Defense Contact Audits Agency, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any DCAA employee who files a complaint, with regard to personnel issues, that requires a legal opinion for resolution.

CATEGORIES OF RECORDS IN THE SYSTEM:

Fraud files contain interoffice memorandums, citations used in determining legal opinion, in some cases copies of investigations (FBI), copies of Agency determinations.

EEO files contain initial appeal, copies of interoffice memorandums, testimony at EEO hearings, copy of Agency determinations. Citations used in determining legal opinions.

Grievance files contain correspondence relating to DCAA employees filing grievances regarding leave, removals, resignations, suspensions, disciplinary actions, travel, citations used in determining legal opinion, Agency determinations.

MSPB Appeal files contain interoffice memorandums, citations used in determining the legal position, statements of witnesses, pleadings, briefs, MSPB decisions, notices of judicial appeals, litigation reports and correspondence with the Department of Justice.

Award files contain correspondence relating to DCAA employee awards, suggestion evaluations, citations used for legal determinations, Agency determination.

Security Violation files contain interoffice correspondence relating to DCAA employee security violations, citations used in determinations, Agency determination.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. chapters 43, 51, and 75; 5 U.S.C. 301, Departmental Regulations; and the Civil Service Reform Act of 1978.

PURPOSE(S):

To maintain a historical reference for matters of legal precedence within DCAA to ensure consistency of action and the legal sufficiency of personnel actions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' that appear at the beginning of DCAA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

Primary filing system is by subject; within subjects, files are alphabetical by subject, corporation, name of individual.

SAFEGUARDS:

Under staff supervision during duty hours; security guards are provided during nonduty hours.

RETENTION AND DISPOSAL:

These files are for permanent retention. They are retained in active files for five years and retired to Washington National Records Center.

SYSTEM MANAGER(S) AND ADDRESS:

Counsel, Headquarters, Defense Contract Audit Agency, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Records Administrator, Defense Contract Audit Agency, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Records Administrator, Defense Contract Audit Agency, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219.

Written requests for information should contain the full name of the individual, current address and telephone number.

Personal visits are limited to those offices (Headquarters and Regional offices) listed in the appendix to the agency's compilation of systems of records notices. For personal visits, the individual should be able to provide some acceptable identification, that is driver's license or employing office's identification card and give some verbal information that could be verified with 'case' folder.

CONTESTING RECORD PROCEDURES:

DCAA's rules for accessing records, for contesting contents and appealing initial agency determinations are published in DCAA Regulation 5410.10; 32 CFR part 317; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Correspondence from individual's supervisor, DCAA employees, former employers, between DCAA staff members, and between DCAA and other Federal agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

RDCAA 240.5

SYSTEM NAME:

Standards of Conduct, Conflict of Interest *(February 22, 1993, 58 FR 10848).*

CHANGES:

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Add a new sentence 'Any DCAA employee who has requested an ethics opinion regarding the propriety of future actions on their part.'

CATEGORIES OF RECORDS IN THE SYSTEM:

In the first sentence, insert 'or potential' between 'apparent' and 'conflict'.

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '5 U.S.C. 301, Departmental Regulations; 5 U.S.C. 5532; DoD 5500.7-R, Joint Ethics Regulation (JER); and E.O. 12731.'

* * * * *

RDCAA 240.5

SYSTEM NAME:

Standards of Conduct, Conflict of Interest.

SYSTEM LOCATION:

Office of Counsel, Headquarters, Defense Contract Audit Agency, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any DCAA employee who has accepted gratuities from contractors or who has business, professional or financial interests that would indicate a conflict between their private interests and those related to their duties and responsibilities as DCAA personnel. Any DCAA employee who is a member or officer of an organization that is incompatible with their official government position, using public office for private gain, or affecting adversely the confidence of the public in the integrity of the Government. Any DCAA employee who has requested an ethics opinion regarding the propriety of future actions on their part.

CATEGORIES OF RECORDS IN THE SYSTEM:

Office of Counsel-Files contain documents and background material on any apparent or potential conflict of interest or acceptance of gratuities by DCAA personnel. Correspondence may involve interoffice memorandums, correspondence between former DCAA employees and Headquarters staff members, citations used in legal determinations and Agency determinations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; DoD 5500.7-R, Joint Ethics Regulation (JER); and E.O. 12731.

PURPOSE(S):

To provide a historical reference file of cases that are of precedential value to ensure equality of treatment of individuals in like circumstances.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' that appear at the beginning of DCAA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

Primary filing system is by subject, within subject, files are alphabetical by subject, corporation, name of individual.

SAFEGUARDS:

Under staff supervision during duty hours; buildings have security guards during nonduty hours.

RETENTION AND DISPOSAL:

These files are for permanent retention. They are retained in active files for five years and then retired to Washington National Records Center.

SYSTEM MANAGER(S) AND ADDRESS:

Counsel, Headquarters, Defense Contract Audit Agency, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Records Administrator, Defense Contract Audit Agency, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Records Administrator, Defense Contract Audit Agency, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219.

The request should contain the full name of the individual, current address and telephone number.

Personal visits may be made to the above address. In personal visits, the individual should be able to provide acceptable identification, that is, driver's license or employing offices' identification card, and give some verbal information that can be verified with 'case' folder.

CONTESTING RECORD PROCEDURES:

DCAA's rules for accessing records, for contesting contents and appealing initial agency determinations are published in DCAA Regulation 5410.10; 32 CFR part 317; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Correspondence from individual's supervisor, DCAA employees, former employees, between DCAA staff members, and between DCAA and other Federal agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

RDCAA 358.3

SYSTEM NAME:

Grievance and Appeal Files *(August 9, 1993, 58 FR 42303).*

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete 'personnel' and insert 'Human Resources Management'.

* * * * *

SAFEGUARDS:

Delete 'personnel' and insert 'Human Resources Management' in the first and second sentences.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

In the first sentence, delete 'personnel' and insert 'Human Resources Management'.

NOTIFICATION PROCEDURE:

In the first sentence of the first paragraph, delete 'personnel' and insert 'Human Resources Management'. In the first sentence of the third paragraph, delete 'personnel' and insert 'Human Resources Management'.

RECORD ACCESS PROCEDURE:

In the first sentence of the third paragraph, delete 'personnel' and insert 'Human Resources Management'.

* * * * *

RDCAA 358.3

SYSTEM NAME:

Grievance and Appeal Files.

SYSTEM LOCATION:

Grievant's servicing Human Resources Management Offices in Headquarters or DCAA Regional Offices. Official mailing addresses are published as an appendix

to DCAA's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees or former employees who have filed formal grievances that may be adjudicated under either Chapter 58, DCAA Personnel Manual or a negotiated grievance procedure.

CATEGORIES OF RECORDS IN THE SYSTEM:

The written grievance; assignment of examiner; or selection of an arbitrator or referee; statements of witnesses; written summary of interviews; written summary of group meetings; transcript of hearing if one held; correspondence relating to the grievance and conduct of the inquiry; exhibits; evidence; transmittal; memorandums and letters; decision.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations and DoD Directive 5105.36 (32 CFR part 387).

PURPOSE(S):

To record the grievance, the nature and scope of inquiry into the matter being grieved, and the treatment accorded the matter by management.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To arbitrators, referees, or other third party hearing officers selected by management and/or the parties to the grievance to serve as fact finders or deciders of the matter grieved.

The 'Blanket Routine Uses' that appear at the beginning of DCAA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

Grievance files are filed by subject matter, contract clause, or by name alphabetically.

SAFEGUARDS:

During nonduty hours the Human Resources Management Office and/or filing cabinet is locked. Grievance files are under the control of the Human Resources Management Office staff during duty hours.

RETENTION AND DISPOSAL:

Files are destroyed four years after the grievance has been decided or after the transfer or separation of the employee.

SYSTEM MANAGER(S) AND ADDRESS:

Each servicing Human Resources Management Officer in Headquarters or DCAA Regional Offices. Official mailing addresses are published as an appendix to DCAA's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Human Resources Management Office in the region in which the grievance originated. Official mailing addresses are published as an appendix to the agency's compilation of systems of records notices.

Written requests should contain individual's full name, current address, telephone number and office of assignment.

Individuals may visit the Human Resources Management Office of the region in which the grievance was filed/originated. For personal visits, individual must furnish positive identification.

RECORD ACCESS PROCEDURES:

Individuals may obtain information on access to records by communicating in writing or personally with the servicing Human Resources Management Officer in DCAA Headquarters or DCAA Regional Offices. Official mailing addresses are published as an appendix to DCAA's compilation of systems of records notices.

The request should contain the full name of the individual, current address and telephone number.

Personal visits may be made to the servicing Human Resources Management Officer in Headquarters or DCAA Regional Offices or the system manager. Official mailing addresses are published as an appendix to the agency's compilation of systems of records notices.

CONTESTING RECORD PROCEDURES:

DCAA's rules for accessing records, for contesting contents and appealing initial agency determinations are published in DCAA Regulation 5410.10; 32 CFR part 317; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

The grievant; witnesses; exhibits furnished in evidence by grievant and witnesses; grievance examiner; and persons interviewed by the grievance examiner; deciding official arbitrator, referee, or other third party fact finder or decider.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

RDCAA 367.5

SYSTEM NAME:

Employee Assistance Program (EAP) Counseling Records *(February 22, 1993, 58 FR 10849).*

CHANGES:

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Replace 'Personnel and Security Division' with 'Human Resources Management Division'.

NOTIFICATION PROCEDURE:

Replace 'Personnel and Security Division' with 'Human Resources Management Division'.

RECORD ACCESS PROCEDURE:

Replace 'Personnel and Security Division' with 'Human Resources Management Division'.

* * * * *

RDCAA 367.5

SYSTEM NAME:

Employee Assistance Program (EAP) Counseling Records.

SYSTEM LOCATION:

Human Resources Management Division, Headquarters, Defense Contract Audit Agency, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219.

DCAA regional servicing Human Resources Management Offices; and offices of EAP contractors who perform employee assistance and counseling services. Official mailing addresses are published as an appendix to DCAA's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

DCAA Federal employees assigned to DCAA activities who are referred by management for, or voluntarily request, employee assistance counseling, referral, and rehabilitation.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records relating to patients which are generated in the course of professional counselling, e.g., records on the patient's condition, status, progress and prognosis of personal, emotional, alcohol or drug dependency problems,

including admitted or urinalysis-detected illegal drug abuse.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 5 U.S.C. 7301 and 7904; 42 U.S.C. 290dd–2; Pub. L. 100–71; E.O. 12564; and E.O. 9397 (SSN).

PURPOSE(S):

The system is established to maintain records relating to the counselor's observations concerning patient's condition, current status, progress, prognosis and other relevant treatment information regarding patients in an employee assistance treatment program facility.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Substance abuse records in this system may not be disclosed without prior written consent of such patient, unless the disclosure would be:

(a) To medical personnel to the extent necessary to meet a bona fide medical emergency;

(b) To qualified personnel for the purpose of conducting scientific research, management audits, financial audits, or program evaluation, but such personnel may not identify, directly or indirectly, any individual patient in any report of such research, audit, or evaluating, or otherwise disclose patient identities in any manner; and

(c) Authorized by an appropriate order of a court of competent jurisdiction granted after application showing good cause therefor.

The results of drug testing in this system may not be disclosed without prior written consent of such patient, unless the disclosure would be pursuant to a court of competent jurisdiction where required by the U.S. Government to defend against any challenge against any adverse personnel action.

The DCAA 'Blanket Routine Uses' *do not* apply to this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained and stored in automated data systems, secured filing cabinets, and electronic secured files. Extracts of treatment records are also entered into electronic database on microcomputers.

RETRIEVABILITY:

Records are retrieved manually and automatically by patient's last name, client's case number, Social Security Number, organization, office symbol and counseling area offices or any other combination of these identifiers.

SAFEGUARDS:

Records are stored in locked filing cabinets, and secured working environments. Automated records are protected by restricted access procedures, e.g., password-protected coding system. Access to records is strictly limited to Agency or contractor officials with a bona fide need for the records. Only individuals on a need-to-know basis and trained in the handling of information protected by the Privacy Act have access to the system. All patient records are maintained and used with the highest regard for patient privacy. Safeguarding procedures are in accordance with the Privacy Act and required in Employee Assistance Program contractual service agreements.

RETENTION AND DISPOSAL:

Patient records are destroyed three years after termination of counseling and then destroyed by shredding, burning, or pulping. Electronic records are purged of identifying data five years after termination of counseling. Aggregate data without personal identifiers is maintained for management/statistical reporting purposes until no longer required.

SYSTEM MANAGER(S) AND ADDRESS:

Employee Assistance Program Administrator, Human Resources Management Division, Headquarters, Defense Contract Audit Agency, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Employee Assistance Program Administrator, Human Resources Management Division, Headquarters, Defense Contract Audit Agency, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219.

Individuals must furnish the following for their records to be located and identified: Name, Date of Birth, Social Security Number, Identification Number (if known), approximate date of record, geographic area in which consideration was requested.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Employee Assistance Program Administrator, Human Resources Management Division, Headquarters, Defense Contract Audit Agency, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219.

Individuals must furnish the following for their records to be located and identified: Name, Date of Birth, Social Security Number, approximate date of record, geographic area in which consideration was requested.

CONTESTING RECORD PROCEDURES:

DCAA's rules for accessing records, for contesting contents and appealing initial agency determinations are published in DCAA Regulation 5410.10; 32 CFR part 317; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

The patient to whom the records pertain, Employee Assistance Program counselors, supervisory personnel, co-workers; other agency personnel, outside practitioners; or private individuals to include family members of the patient.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

RDCAA 371.5

SYSTEM NAME:

Locator Records *(February 22, 1993, 58 FR 10850).*

CHANGES:

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SYSTEM LOCATION:

Replace 'Personnel' with 'Human Resources Management'. Replace 'Civilian Personnel' with 'Human Resources Management'.

* * * * *

RDCAA 371.5

SYSTEM NAME:

Locator Records.

SYSTEM LOCATION:

Human Resources Management Office, Headquarters, Defense Contract Audit Agency, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219 and DCAA Regional Offices. Official mailing addresses are published as an appendix to DCAA's compilation of systems of records notices.

System is also maintained at DCAA Field Audit Offices. Addresses for the Field Audit Offices may be obtained from the cognizant Regional Office.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All civilian employees of DCAA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Employee's name, office room number, office telephone number, office symbol, home address, home telephone number, date prepared, spouse's name.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations and DoD Directive 5105.36 (32 CFR part 387).

PURPOSE(S):

To provide a ready reference of employee home address and telephone number to facilitate emergency notification.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' that appear at the beginning of DCAA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

3x5 cards stored in an index card box.

RETRIEVABILITY:

Filed by name.

SAFEGUARDS:

Under control of office staff during duty hours. Building and/or office locked and/or guarded during nonduty hours.

RETENTION AND DISPOSAL:

Retained until separation of employee, then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Human Resources Management Officer, Human Resources Management Office, Headquarters, Defense Contract Audit Agency, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219 and Human Resources Management Officers at DCAA Regional Offices. Official mailing addresses are published as an appendix to the agency's compilation of systems of records notices.

Manager of DCAA Field Audit Offices. Addresses for the Field Audit Offices may be obtained from the cognizant Regional Office.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Human Resources Management Officer, Human Resources Management Office, Headquarters, Defense Contract Audit Agency, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219 and Human Resources Management Officers at DCAA Regional Offices. Official mailing addresses are published as an appendix to the agency's compilation of systems of records notices.

Managers of DCAA Field Audit Offices. Addresses for the Field Audit Offices may be obtained from the cognizant Regional Office.

Written requests for information must include individual's full name, current address, telephone number and office of assignment.

Personal visits may be made to the offices identified above. Individual must furnish positive identification.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Human Resources Management Officer, Human Resources Management Office, Headquarters, Defense Contract Audit Agency, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219 and Human Resources Management Officers at DCAA Regional Offices. Official mailing addresses are published as an appendix to DCAA's compilation of systems of records notices.

Managers of DCAA Field Audit Offices. Addresses for the Field Audit Offices may be obtained from the cognizant Regional Office.

Written requests for information must include individual's full name, current address, telephone number and office of assignment.

Personal visits may be made to the offices identified above. Individual must furnish positive identification.

CONTESTING RECORD PROCEDURES:

DCAA's rules for accessing records, for contesting contents and appealing initial agency determinations are published in DCAA Regulation 5410.10; 32 CFR part 317; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Employee.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

RDCAA 440.2

SYSTEM NAME:

Time and Attendance Reports *(February 22, 1993, 58 FR 10851).*

CHANGES:

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with 'These records are destroyed six years after the end of the pay period to which it is applicable.'

* * * * *

RDCAA 440.2

SYSTEM NAME:

Time and Attendance Reports.

SYSTEM LOCATION:

Primary System-Management Division, Headquarters, Defense Contract Audit Agency, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219.

Decentralized Segments-DCAA Regional Offices and Field Audit Offices. Official mailing addresses are published as an appendix to the DCAA's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All civilian employees of the Defense Contract Audit Agency.

CATEGORIES OF RECORDS IN THE SYSTEM:

File contains a copy of individual's time and attendance report and other papers necessary for the submission of time and attendance reports and collecting of pay from the non-DCAA payroll office.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations and 5 U.S.C., Chapter 55.

PURPOSE(S):

To record the number of hours an employee works each day and the amount of sick and/or annual leave used. Supervisors review and certify accuracy of reports which are furnished to the appropriate Finance and Accounting office within the DoD for payroll purposes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' that appear at the beginning of DCAA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

Filed alphabetically by last name of employee.

SAFEGUARDS:

Files are under staff supervision during duty hours; buildings are locked and/or guarded by security guards during non-duty hours.

RETENTION AND DISPOSAL:

These records are destroyed six years after the end of the pay period to which it is applicable.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Director, Resources, Headquarters, DCAA and the Regional Directors, DCAA and Chiefs of Field Audit Offices. Official mailing addresses are published as an appendix to DCAA's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this record system should address written inquiries to the Records Administrator, Defense Contract Audit Agency, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Records Administrator, Defense Contract Audit Agency, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219.

Written requests for information should contain the full name, address, telephone number of the individual and the employee payroll number.

Personal visits are limited to those offices (Headquarters and 6 regional offices) listed in the appendix to the agency's compilation of systems of records notices. For personal visits, the individual should be able to provide some acceptable identification, that is driver's license or employee identification card.

CONTESTING RECORD PROCEDURES:

DCAA's rules for accessing records, for contesting contents and appealing initial agency determinations are published in DCAA Regulation 5410.10; 32 CFR part 317; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Time and attendance reports are completed by the time and attendance clerk based on information provided by the individual employee.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

RDCAA 590.8

SYSTEM NAME:

DCAA Management Information System (FMIS/AMIS) *(January 19, 1994, 59 FR 2833).*

CHANGES:

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CONTESTING RECORD PROCEDURES:

Within entry change 'Instruction' to 'Regulation'.

* * * * *

RDCAA 590.8

SYSTEM NAME:

DCAA Management Information System (FMIS/AMIS).

SYSTEM LOCATION:

Primary system: Field Audit Office Management Information System (FMIS) is located at all DCAA Headquarters, regional and field audit offices. Official mailing addresses are published as an appendix to DCAA's compilation of systems of records notices.

Secondary system: Agency Management Information System (AMIS) is located at the Naval Computer and Telecommunications Station, Washington, (Code N23), Washington Navy Yard, Washington, DC 20374–1435.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

DCAA employees and contractors.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records relating to audit work performed in terms of hours expended by individual employees, dollar amounts audited, exceptions reported, and net savings to the government as a result of those exceptions; records containing contractor and contract information; records containing reimbursable billing information; name, Social Security Number, pay grade and (optionally) address information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations and E.O. 9397 (SSN).

PURPOSE(S):

To provide managers and supervisors with timely, on-line information regarding audit requirements, programs, and performance.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' that appear at the beginning of DCAA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in automated data systems.

RETRIEVABILITY:

Records are retrieved by organizational levels, name of employee, Social Security Number, office symbol, audit activity codes, or any other combination of these identifiers.

SAFEGUARDS:

Automated records are protected by restricted access procedures. Access to records is strictly limited to authorized officials with a bona fide need for the records.

RETENTION AND DISPOSAL:

Records are retained for two to five years and then destroyed by erasure.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Network Operations Branch, Technical Services Center, Headquarters, Defense Contract Audit Agency, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Chief, Network Operations Branch, Technical Services Center, Headquarters, Defense Contract Audit Agency, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219.

Individuals must furnish name, Social Security Number, approximate date of record, and geographic area in which consideration was requested for record to be located and identified. Official

mailing addresses are published as an appendix to the DCAA's compilation of systems notices.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Chief, Network Operations Branch, Technical Services Center, Headquarters, Defense Contract Audit Agency, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219. Official mailing addresses are published as an appendix to the DCAA's compilation of systems notices.

Individuals must furnish name, Social Security Number, approximate date of record, and geographic area in which consideration was requested for record to be located and identified.

CONTESTING RECORD PROCEDURES:

DCAA's rules for accessing records, for contesting contents and appealing initial agency determinations are published in DCAA Regulation 5410.10; 32 CFR part 317; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual employees, supervisors, audit reports and working papers.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

RDCAA 590.9

SYSTEM NAME:

DCAA Automated Personnel Inventory System (APIS) *(February 22, 1993, 58 FR 10852).*

CHANGES:

* * * * *

SYSTEM LOCATION:

Replace 'of Personnel' with 'Human Resources Management Division'.

* * * * *

RDCAA 590.9

SYSTEM NAME:

DCAA Automated Personnel Inventory System (APIS) *(February 22, 1993, 58 FR 10852).*

SYSTEM LOCATION:

Primary location: Office of the Director, Human Resources Management Division, Headquarters, Defense Contract Audit Agency, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219, and the Human Resources Management Office, DCAA Regional Offices. Official mailing addresses are published as an appendix to the DCAA compilation of systems of records notices.

Secondary location: Defense Construction Supply Center, Defense Electronics Supply Center, and the Defense Logistics Agency Administrative Support Center which maintain systems data under an inter-service support agreement with DCAA to provide payroll and report generating services.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All current civilian employees of DCAA and former employees who were on DCAA rolls any time after January 1, 1977.

CATEGORIES OF RECORDS IN THE SYSTEM:

Current and historical data related to positions occupied by an employee of DCAA such as grade, occupational series, title, organizational location, salary and step, competitive area and level, geographical location, supervisory designation, financial reporting requirement, and bargaining unit status.

Current and historical data related to a DCAA employee's status and tenure in the Federal civil service including veterans preference, competitive status, service computation data, tenure group.

Current and historical data personal to an employee of DCAA such as birth date, physical and mental handicap code, minority group identifier code, and enrollment data for life, health, and retirement programs.

Current and historical education and training data on a DCAA employee such as educational level, professional certifications, training accomplishment and requirements.

Current and historical career management data on a DCAA employee such as performance level indicator codes, performance evaluation scores, and promotion assessment scores.

Current and historical data on awards and recognition received by an employee of DCAA.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; E.O. 9397 (SSN); and DoD Directive 5105.36 (32 CFR part 387).

PURPOSE(S):

To collect, store, and retrieve information to meet personnel and manpower management information requirements in support of program operations, evaluation, and analysis.

To satisfy external and internal reporting requirements.

To provide information to officials of DCAA for effective personnel management and administration.

To designated employees of the Defense Logistics Agency authorized under agreement with DCAA to maintain records necessary to provide payroll and report generation services.

To designated automated data processing vendors with whom DCAA may contract are authorized to maintain and enhance data and computer operating systems necessary for DCAA personnel to process data and produce required outputs. Vendors neither obtain output from the system nor access the stored data for other than validated, approved test procedures.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' that appear at the beginning of DCAA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Input paper documents are stored in file folders and/or file cabinets. Information converted to automated form for storage in the system is stored on magnetic tape and/or disks.

Output reports on computed printout paper are stored in file cabinets, specialized file containers, or library shelving.

Individual employee output reports are filed in folders retained within official personnel, performance, or medical records.

RETRIEVABILITY:

Information is retrieved by Social Security Number.

SAFEGUARDS:

Access to computerized data requires knowledge and use of a series of system identification codes and passwords which must be entered in proper sequence. Access to computerized data is limited to system analysts and programmers authorized to support the system, individuals authorized to provide payroll and report generating services, and DCAA personnel and EEO office employees.

Access to output reports is limited to individuals with a need-to-know.

RETENTION AND DISPOSAL:

Records in the automated data base, with the exception of non-SES performance appraisal data, are permanent.

Paper input documents and output printouts and reports, except for those required to be maintained in an employee's official personnel, performance, or medical file, are retained for reference purposes only until superseded or no longer required. When superseded or no longer required, these records will be destroyed by shredding or burning.

Copies of records authorized to be maintained by supervisors or other operating officials will be destroyed one year after transfer or separation of employee.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Human Resources Management Division, Headquarters, Defense Contract Audit Agency, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219 and the Human Resources Management Officers at the DCAA Regional Offices for data in their data banks. Official mailing addresses are published as an appendix to the DCAA compilation of systems of records notices.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Director, Human Resources Management Division, Headquarters, Defense Contract Audit Agency, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219.

For verification purposes, written request for information must include individual's full name, current address, telephone number and office of assignment.

Personal visits may be made to the Office identified above. Individual must furnish positive identification.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Director, Human Resources Management Division, Headquarters, Defense Contract Audit Agency, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219.

For verification purposes, written requests for information must include individual's full name, current address, telephone number and office of assignment.

Personal visits may be made to the office identified above. Individual must furnish positive identification.

CONTESTING RECORD PROCEDURES:

DCAA's rules for accessing records, for contesting contents and appealing initial agency determinations are published in DCAA Regulation 5410.10; 32 CFR part 317; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Agency supervisors and administrative personnel, medical officials, previous federal employees, U.S. Office of Personnel Management. Applications and forms completed by the individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 97–30419 Filed 11–19–97; 8:45 am]

BILLING CODE 5000–04–F

DEPARTMENT OF DEFENSE

Department of the Army

Corps of Engineers

Environmental Impact Statement: Prado Basin, Riverside, CA; Water Supply Study

AGENCY: U.S. Army Corps of Engineers, Los Angeles District, DOD.

ACTION: Notice of intent.

SUMMARY: The Los Angeles District intends to prepare an EIS to support the proposed water supply study at Prado Basin, Riverside County, California. The purpose of the proposal is to increase the level of water conservation storage within Prado Basin, and allow Orange County Water District to harvest the water through their recharge facilities along the Santa Ana River downstream of Prado Basin. The proposed project alternatives would include increasing the level of water storage during the non-flood season from 505 feet to 508 feet, storage of water at elevation 505 year-round, as well as a no action alternative. The EIS will analyze potential impacts on the environment of a range of alternatives, including the recommended plan.

FOR FURTHER INFORMATION CONTACT: For further information contact Mr. Gary Gunther at (213) 452–3794 or Mr. Alex Watt either by telephone at (213) 452–3860, by fax at (213) 452–4204, or by mail at the address below.

SUPPLEMENTARY INFORMATION: The Army Corps of Engineers intends to prepare an EIS to assess the environmental effects associated with the proposed water supply study. The public will have the opportunity to comment on this analysis before any action is taken to implement the proposed action.

Scoping

The Army Corps of Engineers will conduct a scoping meeting prior to preparing the Environmental Impact Statement to aid in determining the significant environmental issues associated with the proposed action. The public, as well as Federal, State, and local agencies are encouraged to participate in the scoping process by submitting data, information, and comments identifying relevant environmental and socioeconomic issues to be addressed in the environmental analysis. Useful information includes other environmental studies, published and unpublished data. alternatives that should be addressed in the analysis, and potential mitigation measures associated with the proposed action.

A public scoping meeting will be held in conjunction with the Orange County Water District in November, 1997. The location, date, and time of the public scoping meeting will be announced in the local news media. A separate notice of this meeting will be sent to all parties on the project mailing list.

Individuals and agencies may offer information or data relevant to the environmental or socioeconomic impacts by attending the public scoping meeting, or by mailing the information to Mr. Alex Watt at the address below prior to December 30, 1997. Comments, suggestions, and requests to be placed on the mailing list for announcements and for the Draft EIS, should be sent to Alex Watt, U.S. Army Corps of Engineers, Los Angeles District, ATTN: CESPL–PD–RQ, P.O. Box 532711, Los Angeles, CA 90053.

Availability of the Draft EIS

The Draft EIS is expected to be published and circulated in July 1998, and a public hearing to receive comments on the Draft EIS will be held after it is published.

Mary V. Yonts,

Alternate Army Federal Register Liaison Officer.

[FR Doc. 97–30487 Filed 11–19–97; 8:45 am]

BILLING CODE 3710–KF–M

DEPARTMENT OF DEFENSE

Department of the Army

Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement (DEIS), Skagit River Flood Damage Reduction Study, Skagit County Washington

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of Intent.

SUMMARY: Seattle District, U.S. Army Corps of Engineers is proposing to prepare an Environmental Impact Statement (EIS) for the Skagit River Flood Damage Reduction Study. This study was requested by Skagit County, Washington because of significant flooding on the Skagit River. Skagit County will provide fifty percent of the funding for this study. An EIS is being prepared because of the potential for impacts on environmental resources, particularly salmonid habitat, and the intense public interest already demonstrated in addressing the flooding problems of the Skagit River. The study is expected to take approximately four years to complete.

DATES: Persons or organizations wishing to submit scoping comments should do so by December 30, 1997. Public comment may also be made at the scoping meeting (date and location to be announced later). Notification of scoping meetings times and locations will be sent to all agencies, organizations and individuals on the project mailing list.

ADDRESSES: Requests for inclusion on the mailing list, future documents, and all comments on the proposed project should be sent to: Michael Scuderi, NEPA Coordinator, Seattle District, U.S. Army Corps of Engineers, P.O. 3755, Seattle, Washington 98124–2255, ATTN: CENWS–EN–PL–ER, telephone (206) 764–3479, FAX (206) 764–4470, or e-mail Michael.R.Scuderi@usace.army.mil.

FOR FURTHER INFORMATION CONTACT: Contact General questions concerning the proposed action and the Draft EIS can be directed to: Michael Scuderi, Study Environmental Coordinator (see address above) or Forest Brooks, Project Manager, Seattle District, U.S. Army Corps of Engineers, P.O. 3755, Seattle, Washington 98124–2255, ATTN: CENWS–EN–PL–CP, telephone (206) 764–3456, FAX (206) 764–4470, or e-mail Forest.C.Brooks@usace.army.mil.

SUPPLEMENTARY INFORMATION:

Background

The purpose of the Skagit River Feasibility Flood Control study is better identify the Skagit River flood problems and opportunities that exist to relieve flooding and reduce flood damages, and to develop a flood damage reduction plan that fits Federal law and policy, and is within the capability of the local sponsor to support their required share of the project costs. The Skagit River Basin is located in northwestern Washington state and encompasses 3,140 square miles. The major cities on the Skagit River delta, Mt. Vernon, Burlington, and Sedro Woolley, lie about 60 miles north of Seattle. The study area for the feasibility study will be the Skagit River floodplain downstream of Concrete (river mile 54), with prime emphasis on the Skagit River delta west of Sedro Woolley (river mile 22). Authority for this study is contained in Section 209 of the 1962 Flood Control Act, Pub. L. 87–874. That section authorized a comprehensive study of Puget Sound, Washington and adjacent Waters, including tributaries, in the interest of flood control, navigation, and other water uses and related land resources.

Alternatives

In the reconnaissance phase for the Skagit Study, the Corps identified two alternative courses of action for further analysis in the feasibility study:

(1) No Action. Allow the current levee system to remain in place without a major system wide upgrade. Individual diking districts would continue to operate, maintain, and repair the existing levee system.

(2) Construct a coordinated levee improvement project that would provide a higher level of flood protection (100-year or greater) for the Burlington and Mt. Vernon urban areas through a system of new and raised levees with overflow sections at critical locations in rural areas designed to overtop without failure (during 25-year or greater events). Sections of the rural levees would also be upgraded to provide a uniform level of protection in rural areas.

Variations to alternative 2 will be examined in detail during the feasibility study and additional alternatives may be created for comparison purposes.

The study could be expanded to include environmental restoration opportunities if a suitable non-Federal sponsor wished to provide funding for considering these elements as part of the Skagit Study.

Scoping

Public involvement will be sought during scoping, plan formulation, and preparation of the EIS in accordance with NEPA procedures. A public scoping process has been started: (1) to clarify which issues appear to be major public concerns, (2) to identify any information sources that might be available to analyze and evaluate impacts, and (3) to obtain public input on the range and acceptability of alternatives. This Notice of Intent formally commences the scoping process under NEPA. As part of the scoping process, all affected Federal, State and local agencies, Indian Tribes, and other interested private organizations, including environmental groups, are invited to comment on the scope of the EIS. Comments are requested concerning issues of concern, project alternatives, potential mitigation measures, probable significant environmental impacts, and permits or other approval that may be required by any project.

The following key areas have been identified so far to be analyzed in depth in the draft EIS:

(1) Flooding Characteristics (existing and with any project)
(2) Impacts to Fish Habitat
(3) Impacts to Riparian Habitat
(4) Impacts to Wetlands
(5) Impacts to Cultural Resources

Scoping Meeting

Opportunity to comment on the planned study will also be available at the study scoping meeting which has yet to be scheduled. Details of the meeting time and location will be announced in the local media. Notices will be sent to all agencies, organizations and individuals on the mailing list.

Availability of Draft EIS

The Corps expects to complete preparation of the draft EIS and have review copies of its available by May 2001.

James M. Rigsby,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 97–30489 Filed 11–19–97; 8:45 am]

BILLING CODE 3710–ER–M

DEPARTMENT OF DEFENSE

Department of the Navy, DOD

Notice of Intent To Grant Exclusive Patent License; Prime Capital Group, Inc.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant

to the Prime Capital Group, Inc., a revocable, nonassignable, exclusive license in the United States to practice the Government owned invention described in U.S. Patent Application Serial No. 08/670,909 entitled ''Non-Thermal Process for Annealing Crystalline Materials,'' filed June 6, 1996, in the fields of all steps related to manufacture of semiconductors and related devices.

Anyone wishing to object to the grant of this license has 60 days from the date of this notice to file written objections along with supporting evidence, if any. Written objections are to be filed with the Office of Naval Research, ONR 00CC, Ballston Tower One, 800 North Quincy Street Arlington, Virginia 22217–5660, telephone (703) 696–4001.

FOR FURTHER INFORMATION CONTACT: Mr. R.J. Erickson, Staff Patent Attorney, Office of Naval Research, ONR 00CC, Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217–5660, telephone (703) 696–4001.

Dated: November 13, 1997.

Darse E. Crandall,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 97–30534 Filed 11–19–97; 8:45 am]

BILLING CODE 3810–FF–M

DEPARTMENT OF DEFENSE

Department of the Navy

Privacy Act of 1974; System of Records

AGENCY: Department of the Navy

ACTION: Notice to Alter a System of Records

SUMMARY: The Department of the Navy proposes to alter a record system in its inventory of system of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The action will be effective without further notice on December 22, 1997 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Department of the Navy, PA/FOIA Policy Branch, Chief of Naval Operations (N09B30), 2000 Navy Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONTACT: Mrs. Doris Lama at (202) 685–6545 or DSN 325–6545.

SUPPLEMENTARY INFORMATION: The complete inventory of the Department of the Navy's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on November 12, 1997, to the House Committee on Government Reform and Oversight, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

The specific changes to the record system being altered are set forth below followed by the notice, as altered, published in its entirety.

Dated: November 17, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

N06320–2

SYSTEM NAME:

Family Advocacy Program System *(May 3, 1996, 61 FR 19910).*

CHANGES:

SYSTEM IDENTIFIER:

Delete entry and replace with 'N01752–1'.

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'Navy Case Files: Family Service Center, Family Advocacy Center, and/or Medical Treatment Facilities at the local naval activity that services the local beneficiaries. Official mailing addresses for naval activities are published as an appendix to the Department of the Navy's compilation of systems of records notices.

Marine Corps Family Advocacy Program Records: Marine Corps installations with a Family Service Center. Official mailing addresses are published as an appendix to the Department of the Navy's compilation of records notices.

Navy Central Registry: Commanding Officer, Naval Medical Management Information Center, 8901 Wisconsin Avenue, Bethesda, MD 20889–5066.

Marine Corps Central Registry: Commandant of the Marine Corps; Head, Family Advocacy Program (MHF-25), Headquarters, U.S. Marine Corps, 2 Navy Annex, Washington, DC 20380–1775.

Navy Centralized Child Sexual Abuse Case Files: Chief of Naval Personnel (Pers-661), 2 Navy Annex, Washington, DC 20370–6610.'

CATEGORIES OF INDIVIDUALS COVERED IN THE SYSTEM:

Delete entry and replace with 'All beneficiaries entitled to care at Navy medical and dental facilities whose abuse or neglect is brought to the attention of appropriate authorities.

All beneficiaries reported for abusing or neglecting such victims.

Victims/offenders not associated with the Department of the Navy and who are not generally entitled to care at Navy medical and dental facilities.'

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with 'Navy Family Advocacy Case Files:

(a) Victim's file consists of risk assessment which includes the following forms: incident report, eligibility decision, demographics, safety assessment, safety response, risk focused assessment reports (DOMAINS I, II, IV, V, VI, VII), risk assessment matrix, risk assessment summary, risk assessment findings, intervention plan, and Case Review Committee presentation; video/audio tapes of contact with victim; case notes about victim; Family Advocacy Program generated correspondence regarding abuse or neglect of victim; Original copy of DD Form 2486; Privacy Act Statement signed by victim; contacts with children who are not victims of abuse or neglect, and other supporting data assembled relevant to the abuse or neglect and generated by FAP staff that are specific to the victim.

(b) Offender's file consists of assessment with offender; demographics; video-audio tapes of contacts with offender; case notes on contacts with offender; case notes about offender; risk focused assessment report Domain III (alleged offender characteristics); Family Advocacy Program (FAP) generated correspondence regarding offender; Privacy Act Statement signed by offender; and other supporting data assembled relevant to the abuse or neglect and generated by the FAP staff that are specific to the offender.

(c) Documentation generated outside of the Family Advocacy Program (Naval Criminal Investigative Service reports; local police reports; Base Security Incident Complaint Reports; psychiatric and substance abuse evaluations; treatment reports; copies of pertinent medical entries; Child Protective Service reports; shelter reports; photographs; correspondence generated outside the Family Advocacy Program; and other supporting data assembled relevant to the abuse or neglect and generated outside the FAP that are specific to either the victim(s) or

offender(s) (e.g., Military Protective Orders, barring letters, and civilian temporary restraining orders) are maintained in a separate folder and are retrieved by case number.

Marine Corps Program Family Advocacy Program Files:

(a) Victim's file consists of client's fact sheet (demographics); Privacy Act Statement signed by victim; Limits of Privacy Statement signed by victim; initial assessment; CRC Case Assessment with risk assessment; audio/video tapes of contact with victim; safety plan; notes on collateral contacts about victim; case notes; CRC case status determination; CRC generated correspondence; Command's Case disposition and recommendation approval letter; original copy of DD Form 2486 and other relevant supporting data generated by the FAP staff that is specific to the victim.

(b) Offender's file consists of client's fact sheet (demographics); Privacy Act Statement signed by offender; Limits of Privacy Statement signed by offender; initial assessment; CRC Case Assessment; audio/video tapes of contacts with offender; case notes on collateral contacts regarding offender; case notes; CRC case status determination; CRC generated correspondence; Command's Case disposition and recommendation approval letter; copy of DD Form 2486 and other relevant supporting data generated by the FAP staff that is specific to the offender.

(c) Documentation generated outside of the Family Advocacy Program (Naval Criminal Investigative Service reports; local police reports; Base Security Incident Complaint Reports; psychiatric and substance abuse evaluations; treatment reports; copies of pertinent medical entries; Child Protective Service reports; shelter reports; photographs; correspondence generated outside the Family Advocacy Program; and other supporting data assembled relevant to the abuse or neglect and generated outside the FAP that are specific to either the victim(s) or offender(s) (e.g., Military Protective Orders, barring letters, and civilian temporary restraining orders) are maintained in a separate folder and are retrieved by case number.

Both the Navy and Marine Corps Central Registries contain data elements extracted from DD 2486, Child/Spouse Abuse Incident Report.'

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '5 U.S.C. 301, Departmental Regulations; DoD Directive 6400.1, 6400.1-M, 6400.2; Secretary of the Navy Instruction 1752.3A; OPNAVINST 1752.2A; BUMEDINST 6320.22; and MCO 1752.3B (FAP SOP); and E.O. 9397 (SSN).'

PURPOSE(S):

Delete entry and replace with 'To collect information pertaining to the identification, prevention, evaluation, intervention, treatment and rehabilitation of beneficiaries involved in abuse or neglect.

To provide headquarters centralized case management of child sexual abuse incidents (for Navy only).

To provide pertinent case-related information to DoD and DON officials, other than Commanding Officers, responsible for specific case interventions in abuse and/or neglect incidents (e.g., clinical counselors providing counseling/treatment to victims and/or offenders, medical personnel providing medical treatment to victims and/or offenders).

To provide specific data on assessed risk, safety needs, case status, and recommended actions to commanding officers of FAP involved service members.

To provide case specific information to headquarters personnel for necessary review and oversight.

Purposes of the Central Registries: To support local FAP case management to include tracking of individuals, identification of prior FAP involvement, and monitoring of caseloads.

To support FAP budget and staffing requirements and policy changes.

To support the BUPERS flagging and assignment control process for FAP involved service members.

To provide information in support of the 'Installation Records Check (IRC)' required by OPNAVINST 1700.9D for screening applicants for any position which involves the care and/or supervision of children.

To provide the Defense Manpower Data Center (DMDC) with non-identifying data from the Navy Central Registry data tapes.

To support FAP research efforts.

To respond to public and/or other government agencies' requests for aggregate data.'

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES FOR SUCH USES:

Delete paragraph three and replace with 'To contractors, private and public individuals/organizations for authorized health research in the interest of the federal government and the public. When not considered necessary, client identification data shall be eliminated from records used for research studies.'

* * * * *

SAFEGUARDS:

Delete first paragraph and replace with 'These files are highly sensitive and must be protected from unauthorized disclosure. While records may be maintained in various kinds of filing equipment, specific emphasis is given to ensuring that the equipment areas are monitored or have controlled access. Access to records or information or the central registry is limited to those officials who have been properly screened and trained and/or have a need to know consistent with the purpose for which the information was collected. The threshold for 'need to know' is strictly limited to those officials who are responsible for the identification, prevention, evaluation, intervention, treatment and rehabilitation of beneficiaries involved in abuse or neglect. Also pertinent information is limited to DoD and DON officials responsible for intervening in abuse and/or neglect incidents.'

RETENTION AND DISPOSAL:

Delete paragraph two and replace with 'Navy Central Registry data base is retained permanently at the Naval Medical Information Management Center, 8901 Wisconsin Avenue, Bethesda, MD 20889–5066.'

Add the following new paragraph 'Marine Corps Central Registry data is retained permanently by the Commandant of the Marine Corps (MHF-20), Headquarters. U.S. Marine Corps, 2 Navy Annex, Washington, DC 20380–1775.'

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Navy Central Registry: Commanding Officer, Naval Medical Management Information Center, 8901 Wisconsin Avenue, Bethesda, MD 20889–5066.Marine Corps Central Registry: Commandant of the Marine Corps; Head, Family Advocacy Program (MHF-25), Headquarters, U.S. Marine Corps, 2 Navy Annex, Washington, DC 20380–1775.

Navy Centralized Child Sexual Abuse Case Files: Chief of Naval Personnel (Pers-661), 2 Navy Annex, Washington, DC 20370–6610.

Case Files: Commanding officers of installations with Family Service Centers, Medical Treatment Facilities, or Family Advocacy Centers at naval and marine corps activities. Official mailing addresses are published as an appendix to the Department of the Navy's compilation of systems of records notices.'

NOTIFICATION PROCEDURE:

Delete paragraph three and replace with 'Individuals seeking to determine

whether this system of records contains information in the Navy Central Registry about themselves shall address written inquiries for Navy case to the Chief, Bureau of Medicine and Surgery, 2300 E Street NW, Washington, DC 20372–5120.

For the Marine Corps Central Registry address written inquiries to the Commandant of the Marine Corps (MHF-25) Headquarters, U.S. Marine Corps, 2 Navy Annex, Washington, DC 20380–1775.'

RECORD ACCESS PROCEDURES:

Delete paragraph three and replace with 'Individuals seeking to access information from the Navy Central Registry about themselves shall address written inquiries for the Navy Central Registry to the Chief, Bureau of Medicine and Surgery, 2300 E Street NW, Washington, DC 20372–5120;

For the Marine Corps Central Registry address written inquiries to the Commandant of the Marine Corps (MHF-25) Headquarters, U.S. Marine Corps, 2 Navy Annex, Washington, DC 20380–1775.'

RECORD SOURCE CATEGORIES:

Delete entry and replace with 'Victim; offender; other DoD component Central Registries; medical and dental records; educational institutions; medical facilities; private practitioners; law enforcement agencies; public and private health and welfare agencies, and witnesses.'

* * * * *

N01752–1

SYSTEM NAME:

Family Advocacy Program System.

SYSTEM LOCATION:

Navy Case Files: Family Service Center, Family Advocacy Center, and/or Medical Treatment Facilities at the local naval activity that services the local beneficiaries. Official mailing addresses for naval activities are published as an appendix to the Department of the Navy's compilation of systems of records notices.

Marine Corps Family Advocacy Program Records: Located at Marine Corps installations with a Family Service Center. Official mailing addresses are published as an appendix to the Department of the Navy's compilation of records notices.

Navy Central Registry: Commanding Officer, Naval Medical Management Information Center, 8901 Wisconsin Avenue, Bethesda, MD 20889–5066.

Marine Corps Central Registry: Commandant of the Marine Corps; Head, Family Advocacy Program (MHF-25), Headquarters, U.S. Marine Corps, 2 Navy Annex, Washington, DC 20380–1775.

Navy Centralized Child Sexual Abuse Case Files: Chief of Naval Personnel (Pers-661), 2 Navy Annex, Washington, DC 20370–6610.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All beneficiaries entitled to care at Navy medical and dental facilities whose abuse or neglect is brought to the attention of appropriate authorities.

All beneficiaries reported for abusing or neglecting such victims.

Victims not associated with the Department of the Navy and who are not generally entitled to care at Navy medical and dental facilities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Navy Family Advocacy Case Files: (a) Victim's file consists of initial assessment with victim; risk assessment which includes the following forms: incident report, eligibility decision, demographics, safety assessment, safety response, risk focused assessment reports (DOMAINS I, II, IV, V, VI, VII), risk assessment matrix, risk assessment summary, risk assessment findings, intervention plan, and Case Review Committee presentation; video/audio tapes of contact with victim; case notes on collateral contacts about victim; Family Advocacy Program generated correspondence regarding abuse or neglect of victim; Original copy of DD Form 2486; Privacy Act Statement signed by victim; contacts with children who are not victims of abuse or neglect, and other supporting data assembled relevant to the abuse or neglect and generated by FAP staff that are specific to the victim.

(b) Offender's file consists of initial assessment with offender; demographics; video-audio tapes of contacts with offender; case notes on contacts with offender; case notes on collateral contacts about offender; Family Advocacy Program (FAP) generated correspondence regarding offender; Privacy Act Statement signed by offender; and other supporting data assembled relevant to the abuse or neglect and generated by the FAP staff that are specific to the offender.

(c) Documentation generated outside of the Family Advocacy Program (Naval Criminal Investigative Service reports; local police reports; Base Security Incident Complaint Reports; psychiatric and substance abuse evaluations; treatment reports; copies of pertinent medical entries; Child Protective Service reports; shelter reports; photographs; correspondence generated outside the Family Advocacy Program; and other supporting data assembled relevant to the abuse or neglect and generated outside the FAP that are specific to either the victim(s) or offender(s) (e.g., Military Protective Orders, barring letters, and civilian temporary restraining orders) are maintained in a separate folder and are retrieved by case number.

Marine Corps Program Family Advocacy Program Files: (a) Victim's file consists of client's fact sheet (demographics); Privacy Act Statement signed by victim; Limits of Privacy Statement signed by victim; initial assessment; CRC Case Assessment with risk assessment; audio/video tapes of contact with victim; safety plan; notes on collateral contacts about victim; case notes; CRC case status determination; CRC generated correspondence; Command's Case disposition and recommendation approval letter; original copy of DD Form 2486 and other relevant supporting data generated by the FAP staff that is specific to the victim.

(b) Offender's file consists of client's fact sheet (demographics); Privacy Act Statement signed by offender; Limits of Privacy Statement signed by offender; initial assessment; CRC Case Assessment; audio/video tapes of contacts with offender; case notes on collateral contacts regarding offender; case notes; CRC case status determination; CRC generated correspondence; Command's Case disposition and recommendation approval letter; copy of DD Form 2486 and other relevant supporting data generated by the FAP staff that is specific to the offender.

(c) Documentation generated outside of the Family Advocacy Program (Naval Criminal Investigative Service reports; local police reports; Base Security Incident Complaint Reports; psychiatric and substance abuse evaluations; treatment reports; copies of pertinent medical entries; Child Protective Service reports; shelter reports; photographs; correspondence generated outside the Family Advocacy Program; and other supporting data assembled relevant to the abuse or neglect and generated outside the FAP that are specific to either the victim(s) or offender(s) (e.g., Military Protective Orders, barring letters, and civilian temporary restraining orders) are maintained in a separate folder and are retrieved by case number.

Both the Navy and Marine Corps Central Registries contain data elements extracted from DD 2486, Child/Spouse Abuse Incident Report.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; DoD Directive 6400.1, 6400.1-M, 6400.2; Secretary of the Navy Instruction 1752.3A; OPNAVINST 1752.2A; BUMEDINST 6320.22; and MCO 1752.3B (FAP SOP); E.O. 9397 (SSN).

PURPOSE(S):

To collect information pertaining to the identification, prevention, evaluation, intervention, treatment and rehabilitation of beneficiaries involved in abuse or neglect.

To provide headquarters centralized case management of child sexual abuse incidents (for Navy only).

To provide pertinent case-related information to DoD and DON officials, other than Commanding Officers, responsible for specific case interventions in abuse and/or neglect incidents (e.g., clinical counselors providing counseling/treatment to victims and/or offenders, medical personnel providing medical treatment to victims and/or offenders).

To provide specific data on assessed risk, safety needs, case status, and recommended actions to commanding officers of FAP involved service members.

To provide case specific information to headquarters personnel for necessary review and oversight.

Purposes of the Central Registries:

To support local FAP case management to include tracking of individuals, identification of prior FAP involvement, and monitoring of caseloads.

To support FAP budget and staffing requirements and policy changes.

To support the BUPERS flagging and assignment control process for FAP involved service members.

To provide information in support of the 'Installation Records Check (IRC)' required by OPNAVINST 1700.9D for screening applicants for any position which involves the care and/or supervision of children.

To provide the Defense Manpower Data Center (DMDC) with non-identifying data from the Navy Central Registry data tapes.

To support FAP research efforts.

To respond to public and/or other government agencies' requests for aggregate data.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Executive Branch of government in the performance of their official duties relating to the coordination of family advocacy programs, medical care, and research concerning family member abuse or neglect.

To federal, state or local government agencies when it is deemed appropriated to utilize civilian resources in the counseling and treatment of individuals or families involved in abuse or neglect or when it is deemed appropriate or necessary to refer a case to civilian authorities for civil or criminal law enforcement.

To contractors, private and public individuals/organizations for authorized health research in the interest of the federal government and the public. When not considered necessary, client identification data shall be eliminated from records used for research studies.

To officials and employees of federal, state, and local governments and agencies when required by law and/or regulation in furtherance of local communicable disease control, family abuse prevention programs, preventive medicine and safety programs, and other public health and welfare programs.

To officials and employees of local and state governments and agencies in the performance of their official duties relating to professional certification, licensing, and accreditation of health care providers.

To law enforcement officials to protect the life and welfare of third parties. This release will be limited to necessary information. Consultation with the hospital or regional judge advocate is advised.

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems notices also apply to this system.

NOTE: Records of identity, diagnosis, prognosis or treatment of any patient which are maintained in connection with the performance of any program or activity relating to substance abuse education, prevention, training, treatment, rehabilitation, or research, which is conducted, regulated, or directly or indirectly assisted by any department or agency of the United States shall, except as provided in 42 U.S.C. 290dd-2, be confidential and be disclosed only for the purposes and under the circumstances expressly authorized in 42 U.S.C. 290dd-2. These statutes take precedence over the Privacy Act of 1974 in regard to accessibility of such records except to the individual to whom the record pertains. The 'Blanket Routine Uses' do not apply to these types of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records may be stored in file folders, microfilm, magnetic tape, machine lists, discs, and other computerized or machine readable media.

RETRIEVABILITY:

Victim's file is retrieved by name of victim, case number, their Social Security Number, and/or year of incident.

Alleged offender's file is retrieved by alleged offender's name, case number, their Social Security Number and/or year of incident.

Central registry data is retrieved by any identifying data element on the DD Form 2486.

SAFEGUARDS:

These files are highly sensitive and must be protected from unauthorized disclosure. While records may be maintained in various kinds of filing equipment, specific emphasis is given to ensuring that the equipment areas are monitored or have controlled access. Access to records or information or the central registry is limited to those officials who have been properly screened and trained and/or have a need to know consistent with the purpose for which the information was collected. The threshold for 'need to know' is strictly limited to those officials who are responsible for the identification, prevention, evaluation, intervention, treatment and rehabilitation of beneficiaries involved in abuse or neglect. Also pertinent information is limited to DoD and DON officials responsible for intervening in abuse and/or neglect incidents.

Information maintained on a computer requires password protection. Computer terminals are located in supervised areas with access controlled system.

Family Advocacy Program Staff will ensure that the in-take assessment and clinical notes are not duplicated and placed in both the victim and alleged offender's files.

RETENTION AND DISPOSAL:

Family Advocacy Program case records are maintained at the activity 4 years after the last entry in the file. If there is no subsequent activity 4 years after closure, the records are transferred to the National Personnel Records Center, 9600 Page Boulevard, St. Louis,

MO 63132–5100, where they are retained for 50 years and then destroyed.

Navy Central Registry data base is retained permanently at the Naval Medical Information Management Center, 8901 Wisconsin Avenue, Bethesda, MD 20889–5066.

Marine Corps Central Registry data is retained permanently by the Commandant of the Marine Corps (MHF-20), Headquarters. U.S. Marine Corps, 2 Navy Annex, Washington, DC 20380–1775.

SYSTEM MANAGER(S) AND ADDRESS:

Navy Central Registry: Commanding Officer, Naval Medical Management Information Center, 8901 Wisconsin Avenue, Bethesda, MD 20889–5066.

Marine Corps Central Registry: Commandant of the Marine Corps; Head, Family Advocacy Program (MHF-25), Headquarters, U.S. Marine Corps, 2 Navy Annex, Washington, DC 20380–1775.

Navy Centralized Child Sexual Abuse Case Files: Chief of Naval Personnel (Pers-661), 2 Navy Annex, Washington, DC 20370–6610.

Case Files: Commanding officers of installations with Family Service Centers, Medical Treatment Facilities, or Family Advocacy Centers at naval and marine corps activities. Official mailing addresses are published as an appendix to the Department of the Navy's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information in the case files about themselves should address written inquiries to the commanding officer of the naval activity from which they received treatment. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records.

Request should contain the full name and Social Security Number of the individual, and/or year of the incident.

Individuals seeking to determine whether this system of records contains information in the Navy Central Registry about themselves shall address written inquiries for Navy case to the Chief, Bureau of Medicine and Surgery, 2300 E Street NW, Washington, DC 20372–5120; for the Marine Corps Central Registry: Commandant of the Marine Corps (MHF-25) Headquarters, U.S. Marine Corps, 2 Navy Annex, Washington, DC 20380–1775.

Requests should contain the full name and Social Security Number of the individual.

Individuals seeking to determine whether this system of records contains information in the centralized Child Sexual Abuse files about themselves should address written inquiries to the Chief of Naval Personnel (Pers-661) 2 Navy Annex, Washington, DC 20370–6610.

Requests should contain the full name and Social Security Number of the individual.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves in the case files should address written inquiries to the commanding officer of the naval activity from which they received treatment. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records.

Request should contain the full name and Social Security Number of the individual, and/or year of the incident.

Individuals seeking to access information from the Navy Central Registry about themselves shall address written inquiries for the Navy Central Registry to the Chief, Bureau of Medicine and Surgery, 2300 E Street NW, Washington, DC 20372–5120; for the Marine Corps Central Registry: Commandant of the Marine Corps (MHF-25) Headquarters, U.S. Marine Corps, 2 Navy Annex, Washington, DC 20380–1775.

Individuals seeking to access records about themselves contained in the centralized Child Sexual Abuse files about themselves should address written inquiries to the Chief of Naval Personnel (Pers-661) 2 Navy Annex, Washington, DC 20370–6610.

Requests should contain the full name and Social Security Number of the individual.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Victim; offender; other DoD component Central Registries; medical and dental records; educational institutions; medical facilities; private practitioners; law enforcement agencies; public and private health and welfare agencies, and witnesses.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Investigatory material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of the information, the individual will be provided access to the information except to the extent that disclosure would reveal the identity of a confidential source.

Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and 3, (c) and (e) and published in 32 CFR part 701, subpart G. For additional information contact the system manager.

[FR Doc. 97–30486 Filed 11–19–97; 8:45 am]

BILLING CODE 5000–04–F

DEPARTMENT OF EDUCATION

DEPARTMENT OF LABOR

Office of School-to-Work Opportunities; Advisory Council For School-To-Work Opportunities; Notice of Open Meeting

SUMMARY: The Advisory Council for School-to-Work Opportunities was established by the Departments of Education and Labor to advise the Departments on implementation of the School-to-Work Opportunities Act. The Council assesses the progress of School-to-Work Opportunities systems development and program implementation; makes recommendations regarding progress and implementation of the School-to-Work initiative; advises on the effectiveness of the new Federal role in providing venture capital to States and localities to develop School-to-Work systems and acts as an advocate for implementing the School-to-Work framework on behalf of its stakeholders.

Time and Place: The Advisory Council for School-to-Work Opportunities will have an open meeting on Tuesday, December 2, 1997, from 8:30 a.m. to 4:30 p.m. at the Renaissance Mayflower Hotel, 1127 Connecticut Avenue, NW, Washington, DC 20036.

Agenda: The agenda for the meeting will include opening remarks and an update on the status of School-to-Work

implementation from 8:30 a.m. to 10:00 a.m. For the rest of the day, the Council will meet with representatives from the State School-to-Work Implementation Grantees in small groups to discuss and determine strategies for addressing State sustainability issues. The meeting will close with a summary of the day's meeting and a discussion of future actions.

Public Participation: The meeting on Tuesday, December 2, 1997, from 8:30 a.m. to 4:30 p.m. at the Renaissance Mayflower Hotel, will be open to the public. Seats will be reserved for the media. Individuals with disabilities in need of special accommodations should contact the Designated Federal Official (DFO), listed below, at least seven (7) days prior to the meeting.

FOR FURTHER INFORMATION CONTACT: JD Hoye, Designated Federal Official (DFO), Advisory Council for School-to-Work Opportunities, Office of School-to-Work Opportunities, 400 Virginia Avenue, S.W., Room 210, Washington, D.C. (202) 401–6222, (This is not a toll free number.)

Signed at Washington, D.C. this 17th day of November 1997.

Jon Weintraub,

Acting Assistant Secretary for Vocational and Adult Education, Department of Education.

Raymond J. Uhalde,

Acting Assistant Secretary, Employment and Training Administration, Department of Labor.

[FR Doc. 97–30492 Filed 11–19–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF ENERGY

Notice of Intent To Prepare an Environmental Impact Statement for the Advanced Mixed Waste Treatment Project at the Idaho National Engineering and Environmental Laboratory, Idaho Falls, ID

AGENCY: Department of Energy.

ACTION: Notice of intent to prepare an Environmental Impact Statement.

SUMMARY: The Department of Energy (DOE) intends to prepare an Environmental Impact Statement (EIS) and conduct a public scoping process for a proposal to construct and operate a facility known as the Advanced Mixed Waste Treatment Project (AMWTP) at the Idaho National Engineering and Environmental Laboratory (INEEL). Under the terms of a 1995 Court Order/Settlement Agreement with the State of Idaho in the case of *Public Service Co.* v. *Batt*, Civil No. 91–0035–S–EJL (D. Idaho) (Lead case), DOE agreed to procure a treatment facility for mixed low-level waste, transuranic waste and alpha-contaminated mixed low-level waste, and to treat transuranic waste that requires treatment so as to permit disposal outside of the State of Idaho at the Waste Isolation Pilot Plant in New Mexico or other acceptable disposal facility. DOE also needs to manage DOE alpha-contaminated mixed low-level waste, transuranic waste, and mixed low-level waste in a manner that will comply with applicable laws and requirements, and protect the environment and the health and safety of the workers and the public in a cost-effective manner. The AMWTP EIS will assist the Department in making the necessary decisions to comply with the Settlement Agreement and other applicable requirements for these wastes.

DOE's proposed action is to implement a proposal from British Nuclear Fuels Limited, Inc. (BNFL) to construct and operate the AMWTP at the INEEL. The AMWTP, as proposed by BNFL, would retrieve, sort, characterize, and treat mixed low-level waste and approximately 65,000 cubic meters of alpha-contaminated mixed low-level waste and transuranic waste currently stored at the INEEL Radioactive Waste Management Complex, and package the treated waste for shipment off site for disposal. The AMWTP would employ thermal treatment processes (incineration and vitrification) and also treat similar wastes generated by ongoing INEEL activities and activities at other DOE sites.

This EIS will make use of previously developed information and analyses by ''tiering'' from other environmental impact statements, including: (1) the Department of Energy Programmatic Spent Nuclear Fuel Management and Idaho National Engineering Laboratory Environmental Restoration and Waste Management Programs Final EIS (SNF & INEL EIS) (DOE/EIS–0203–F), issued April 1995; (2) the DOE Waste Management Programmatic Environmental Impact Statement (WM PEIS) (DOE/EIS–0200–F), issued May 1997; and (3) the Waste Isolation Pilot Plant Disposal Phase Final Supplemental Environmental Impact Statement (SEIS–II) (DOE/EIS–0026–S–2), issued September 1997. DOE will conduct two public scoping workshops and welcomes public comment on the scope of the proposed EIS.

DATES: The public scoping period begins with the publication of this Notice in the **Federal Register**. DOE invites other Federal agencies, Native American tribes, State and local governments and the general public to comment on the scope of this EIS. DOE must receive scoping comments by January 9, 1998, to ensure consideration, although DOE will consider comments received after that date to the extent practicable.

Two public workshops will be held during this scoping period:

December 4, 1997—Borah High School, 6001 Cassia, Boise, ID; 6:30 pm–9:00 pm

December 9, 1997—Taylorview Junior High School, 350 Castlerock Lane, Idaho Falls, ID; 6:30 pm–9:00 pm

These workshops will provide the public with information about the proposed project and an opportunity to comment on the scope of the EIS, including the reasonable alternatives and issues that the Department should consider. Written comments may be submitted to DOE at these workshops, sent by facsimile to (208) 526–0598, or mailed to the EIS Document Manager, Mr. John E. Medema, at the address listed below.

ADDRESSES: Written comments on this EIS should be sent to: Mr. John E. Medema, Document Manager, Advanced Mixed Waste Treatment Project EIS, U.S. Department of Energy, Idaho Operations Office, 850 Energy Drive, MS 1117, Idaho Falls, ID 83402, Facsimile: (208) 526–0598.

FOR FURTHER INFORMATION CONTACT: To request information about this EIS, or to be placed on the EIS document distribution list, please call the 24-hour toll-free information line at 1–800–708–2680.

For general information about the DOE National Environmental Policy Act (NEPA) process, please contact: Carol Borgstrom, Director, Office of NEPA Policy and Assistance (EH–42), U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, D.C. 20585–0119, Phone: (202) 586–4600, Messages: (800) 472–2756, Facsimile: (202) 586–7031.

SUPPLEMENTARY INFORMATION:

Background and Purpose and Need for Agency Action

Approximately 25,000 cubic meters of alpha-contaminated low-level waste and 40,000 cubic meters of transuranic waste are currently stored at the Radioactive Waste Management Complex at INEEL. Approximately 95% of this waste is contaminated with Resource Conservation and Recovery Act (RCRA) hazardous waste, classifying it as ''mixed waste.'' INEEL also is storing mixed low-level waste (which refers herein to mixed low-level waste other than alpha-contaminated mixed

low-level waste). Additionally, some of these wastes are in containers that include asbestos and polychlorinated biphenyls, which are regulated under the Toxic Substances Control Act. Similar wastes are generated as a result of ongoing environmental restoration, decontamination and decommissioning, waste retrieval projects, and other activities at INEEL and other DOE sites. Depending on decisions resulting from the Federal Facilities Compliance Act process and the Waste Management Programmatic EIS, up to 120,000 cubic meters of such wastes from other DOE sites could be treated at the proposed AMWTP. To protect the environment and public health and meet existing regulatory requirements, including the RCRA Land Disposal Restrictions, these wastes must be treated and packaged appropriately for shipment to a disposal facility.

In May 1995, the Department issued its Record of Decision (ROD) (60 FR 28680, June 1, 1995) for the Department of Energy Programmatic Spent Nuclear Fuel Management and Idaho National Engineering Laboratory Environmental Restoration and Waste Management Programs Final EIS (SNF & INEL EIS) (DOE/EIS–0203–F). One of the decisions announced in that ROD was to manage transuranic waste by building ''treatment facilities necessary to comply with the Federal Facility Compliance Act. Treatment of transuranic waste at a minimum will be for the purpose of meeting waste acceptance criteria for disposal at the Waste Isolation Pilot Plant (near Carlsbad, New Mexico) and will occur on a schedule to be negotiated with the State of Idaho.''

On October 17, 1995, the State of Idaho, the Department of the Navy, and the Department of Energy settled the case of *Public Service Co. of Colorado* v. *Batt,* Civil No. CV 91–0035–S-EJL (D. Idaho) (Lead case). Certain conditions of the Idaho Court Order/Settlement Agreement obligated the Department to:

- Commence procurement of a treatment facility at the INEEL for the treatment of mixed (low-level) waste, transuranic waste, and alpha-contaminated mixed low-level waste;
- Execute a procurement contract for the treatment facility by June 1, 1997, complete construction of the facility by December 31, 2002, and commence operation by March 31, 2003.
- Treat waste shipped to Idaho for treatment in the treatment facility within six months (with the exception of two cubic meters of mixed low-level waste from the Mare Island Naval Shipyard);
- Ship transuranic waste received from another DOE site for treatment at the INEEL outside the State of Idaho for storage or disposal within six months of treatment.

In accordance with the Settlement Agreement, DOE conducted a procurement for a facility to treat mixed low-level waste, transuranic waste, and alpha-contaminated mixed low-level waste at the INEEL. On December 20, 1996, DOE executed a phased contract with BNFL to construct and operate the proposed AMWTP. Phase 1, currently in progress, involves information-gathering by BNFL, DOE performing environmental analysis under the National Environmental Policy Act (NEPA), RCRA and other permitting activities by BNFL, and other planning activities needed to support the project if DOE decides to implement the proposed action. Contract phases 2 and 3 would involve the construction and operation of the AMWTP and would occur only after the issuance of a Record of Decision in which the Department indicated its decision to implement the proposed action.

To support the contractor selection process for the AMWTP, DOE undertook the following actions in accordance with DOE NEPA regulations (10 CFR Part 1021.216): (1) Required that offerors submit environmental data and analyses as part of their proposals; and (2) independently verified the accuracy of the environmental data and analyses, and prepared a confidential environmental critique of each offeror's proposal. (The critique included a discussion of the purpose of the procurement, the salient characteristics of each offeror's proposal, permits, licenses and approvals needed, and a comparative evaluation of the potential environmental impacts of the offers.) DOE is preparing an environmental synopsis, based on the environmental critique, to document the consideration given to environmental factors and to record that the relevant environmental consequences of reasonable alternatives have been evaluated in the selection process. The environmental synopsis will be made publicly available and incorporated into this EIS.

The proposed action to be analyzed in the AMWTP EIS is consistent with the ROD for the SNF & INEL EIS and meets the requirements of the Court Order/ Settlement Agreement. The Department of Energy must decide if it will implement Phases 2 and 3 of DOE's contract with BNFL to construct the facility and treat mixed low-level waste, transuranic waste, and alpha-contaminated mixed low-level waste at the INEEL.

The EIS Schedule

The Settlement Agreement requires DOE to ship alpha-contaminated mixed low-level waste and transuranic waste now located at the INEEL, currently estimated at 65,000 cubic meters in volume, to the Waste Isolation Pilot Plant or other disposal facility designated by DOE by a target date of December 31, 2015. If the target date cannot be met, the waste will be shipped no later than December 31, 2018. To comply with the Settlement Agreement, construction of the proposed AMWTP must begin in 1999. Therefore, DOE is planning to complete the EIS and issue a Record of Decision by November 1998.

Alternatives

Proposed Action

Under the proposed action, DOE would implement Phases 2 and 3 of the contract with BNFL to construct and operate a facility for thermally treating mixed low-level waste, transuranic waste, and alpha-contaminated mixed low-level waste according to the treatments required under the RCRA Land Disposal Restrictions, as necessary. The proposed waste treatment process consists of: retrieving wastes from above-ground storage, characterizing and separating wastes, thermally treating up to 25% of the waste using incineration and vitrification, and treating the remaining waste using the physical waste form modification processes of super-compaction and macro-encapsulation. Under the proposed action, the AMWTP may treat up to 120,000 cubic meters of DOE waste from other DOE sites.

Other Action Alternatives

During the procurement process, all of the qualified offerors proposed a similar combination of thermal and physical treatment processes. Nevertheless, DOE intends to consider in the EIS other treatment alternatives, including but not necessarily limited to non-thermal (*e.g.,* chemical treatment), other thermal technologies (*e.g.,* vitrification), and physical treatment processes (*e.g.,* repackaging), and will analyze a range of those treatment processes (or combinations of processes) that DOE determines are reasonable alternatives to the proposed action. DOE invites comments on these treatment options and suggestions for other alternatives that DOE should consider in the EIS.

No Action

The Council on Environmental Quality NEPA Regulations (40 CFR parts 1500–1508) and the DOE NEPA

Regulations (10 CFR part 1021) require the analysis of a no action alternative. Under the no action alternative, DOE would continue storing mixed low-level waste, alpha-contaminated mixed low-level waste and transuranic waste in the existing RCRA Type II storage modules and the earthen covered berm at the Radioactive Waste Management Complex. The waste stored in the earthen berm of the Transuranic Storage Area Retrieval Enclosure would not be retrieved. Under the no action alternative, all INEEL activities supporting the Waste Isolation Pilot Plant would cease once the current inventory of waste that is now ready for transport to the Waste Isolation Pilot Plant has been shipped. Waste currently stored in the RCRA Type II storage modules at the Radioactive Waste Management Complex that could not be shipped to the Waste Isolation Pilot Plant would remain in storage indefinitely. If DOE selects the no action alternative, the contract with BNFL would be terminated for convenience.

Related NEPA Decisions and Reviews

This tiered EIS will use, and supplement as necessary, the information and analyses contained in: (1) the SNF & INEL EIS, (DOE/EIS–0203–F); (2) the WM PEIS, (DOE/EIS–200–F) and (3) SEIS–II (DOE/EIS–0026–S–2).

Volume 2 of the SNF & INEL EIS, issued in April 1995, is a site-wide EIS for environmental restoration and waste management activites at the INEEL. Volume 2 includes analysis of the potential environmental impacts associated with treating alpha-contaminated and transuranic mixed wastes and packaging the waste for shipment to a DOE approved repository. The SNF & INEL EIS evaluated two proposed generic treatment facilities: the Private Sector Alpha Low-Level Waste Treatment Facility, and the Idaho Waste Processing Facility. The SNF & INEL EIS envisioned that these projects would be identical (except for how they would be funded and operated) and would involve thermal (incineration) and non-thermal treatment processes. The SNF & INEL EIS also envisioned that only one of these projects would ultimately be implemented, and that appropriate further NEPA review would be conducted before DOE would decide to implement one of the projects. In the SNF & INEL EIS, the potential environmental impacts of these facilities were analyzed sufficiently to assess their incremental contribution to the cumulative impacts of past, present and reasonably foreseeable future activities at the INEEL.

The WM PEIS, issued in May 1997, is a DOE complex-wide study examining the potential environmental impacts associated with managing five types of radioactive and hazardous wastes generated by past, present, and reasonably foreseeable future activities at 24 major sites located around the United States. The five types of waste examined by the WM PEIS are mixed low-level radioactive waste (including alpha-contaminated mixed low-level waste), low-level radioactive waste, transuranic waste, hazardous waste, and high-level radioactive waste. The WM PEIS preferred treatment alternative for mixed low-level waste is treatment at DOE facilities (including INEEL). The WM PEIS preferred alternative for transuranic waste involves treatment at DOE facilities that have significant quantities of transuranic waste, such as the INEEL. Based on the preferred alternative, treated transuranic waste would be stored where it is treated pending decisions on a final repository (see below). A WM PEIS Record of Decision has not yet been issued for any waste types.

The SEIS–II assesses whether to dispose of transuranic waste at the Waste Isolation Pilot Plant, and reasonable options for transportation and other activities associated with disposal, as well as reasonable alternatives concerning quantities, sources, and treatment of transuranic waste for disposal. The Department's preferred alternative in SEIS–II is to dispose of post-1970 defense transuranic waste at the Waste Isolation Pilot Plant, and to transport the waste to the Waste Isolation Pilot Plant by truck (although DOE would continue to explore the availability of safe and cost-effective commercial rail transportation). The preferred alternative is consistent with the proposed action that will be analyzed in the AMWTP EIS.

In addition to the programmatic EISs described above, the High-Level Waste and Facilities Disposition (HLWFD) EIS is an ongoing NEPA analysis that is potentially related to the AMWTP EIS. The HLWFD EIS will analyze the potential environmental impacts of treating INEEL's high-level waste and associated radioactive waste. The HLWFD EIS is potentially relevant to the proposed Advanced Mixed Waste Treatment Project EIS because a small portion of the radioactive waste (not high-level waste) considered in the former EIS is a candidate for treatment at the proposed AMWTP. A Notice of Intent to prepare the HLWFD EIS was issued on September 19, 1997 (62 FR 49209).

Preliminary Identification of EIS Issues

- Potential effects on the Snake River Plain Aquifer;
- Effects of emissions and discharges from the thermal treatment of mixed low-level waste, alpha-contaminated mixed low-level waste, and transuranic waste;
- Potential effects on the public and workers from exposure to radiological and hazardous materials, during normal operations and from reasonably foreseeable accidents;
- Potential effects on air, soil, and water quality, from normal operations and reasonably foreseeable accidents;
- Potential effects on members of the public, including minority and low income populations, from normal operations and reasonably foreseeable accidents;
- Pollution prevention, waste minimization, and energy and water use reduction technologies to eliminate or reduce use of energy, water, and hazardous substances, and to minimize environmental impacts;
- Potential socioeconomic impacts, including potential impacts associated with the number of workers needed for operations;
- Potential impacts on cultural and historic resources;
- Regulation of commercial operations on a DOE site;
- Compliance with applicable Federal, State, and local requirements and the Court Order/Settlement Agreement;
- Potential cumulative environmental impacts of all past, present, and reasonably foreseeable future operations at the INEEL;
- Potential irreversible and irretrievable commitment of resources and the ultimate use of INEEL land;
- Potential environmental impacts, including long term risks to humans, associated with constructing, operating, and decommissioning the AMWTP.

Issued in Washington, D.C. on November 17, 1997.

Peter N. Brush,

Acting Assistant Secretary Environment, Safety and Health.

[FR Doc. 97–30536 Filed 11–19–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Savannah River Site

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Savannah River Site.

DATES AND TIMES: Friday & Saturday, December 5–6, 1997: 8:30 a.m.–5:00 p.m.

ADDRESSES: The December 5–6, 1997 meetings will be held at: Ocean Plaza, Oceanfront at 15th Street, Savannah, Georgia 31328.

FOR FURTHER INFORMATION CONTACT: Gerri Flemming, Public Accountability Specialist, Environmental Restoration and Solid Waste Division, Department of Energy Savannah River Operations Office, P.O. Box A, Aiken, S.C. 29802 (803) 725–5374.

SUPPLEMENTARY INFORMATION:

Purpose of the Board

The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management and related activities.

Tentative Agenda

Friday, December 5, 1997

8:30 a.m.—Review applications of potential candidates for Board membership and select three qualified applicants per Board vacancy

5:00 p.m.—Adjourn

Saturday, December 6 1997

8:30 a.m.—Review applications of potential candidates for Board membership and select three qualified applicants per Board vacancy

5:00 p.m.—Adjourn.

If necessary, time will be allotted after public comments for items added to the agenda, and administrative details.

Public Participation

The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Gerri Flemming's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments at the end of each day.

Minutes

The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday–Friday except Federal holidays. Minutes will also be available by wrting to Gerri Flemming, Department of Energy Savannah River Operations Office, P.O. Box A, Aiken, S.C. 29802, or by calling her at (803) 725–5374.

Issued at Washington, DC on November 12, 1997.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 97–30510 Filed 11–19–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Secretary of Energy Advisory Board; Notice of Open Meeting

AGENCY: Department of Energy.

SUMMARY: Consistent with the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following advisory committee meeting:

Name: Secretary of Energy Advisory Board—Laboratory Operations Board.

Date and Time: Tuesday, December 9, 1997, 9:00 a.m.–3:30 p.m.

Place: Georgetown University Conference Center, Salon H, 3800 Reservoir Road, NW, Washington, DC 20057.

FOR FURTHER INFORMATION CONTACT: Richard C. Burrow, Secretary of Energy Advisory Board (AB–1), US Department of Energy, 1000 Independence Avenue, SW, Washington, D.C. 20585, (202) 586–1709.

SUPPLEMENTARY INFORMATION: The purpose of the Laboratory Operations Board is to provide advice to the Secretary of Energy Advisory Board regarding the strategic direction of the Department's laboratories, the coordination of budget and policy issues affecting laboratory operations, and the reduction of unnecessary and counterproductive management burdens on the laboratories. The Laboratory Operations Board's goal is to facilitate the productive and cost-effective utilization of the Department's laboratory system and the application of best business practices.

Tentative Agenda

Tuesday, December 9, 1997

9:00–9:30 AM—Introductory Remarks

9:30–10:30 AM—Status Report on LOB Recommendations

10:30–10:45 AM—Break

10:45–11:30 AM—Report on Multiple Laboratory Projects

11:30–12:00 PM—Public Comment Period

12:00–1:00 PM—Lunch

1:00–1:30 PM—Progress Report on Ongoing Studies

1:30–2:00 PM—Report on New Activities

2:00–2:45 PM—Working Session

2:45–3:15 PM—Public Comment Period

3:15–3:30 PM—Closing Remarks

3:30 PM—Adjourn

This tentative agenda is subject to change. A final agenda will be available at the meeting.

Public Participation

The Chairman of the Laboratory Operations Board is empowered to conduct the meeting in a way which will, in the Chairman's judgment, facilitate the orderly conduct of business. During its meeting in Washington, D.C., the Laboratory Operations Board welcomes public comment. Members of the public will be heard in the order in which they sign up at the beginning of the meeting. The Laboratory Operations Board will make every effort to hear the views of all interested parties. Written comments may be submitted to Skila Harris, Executive Director, Secretary of Energy Advisory Board, AB–1, US Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585.

Minutes

Minutes and a transcript of the meeting will be available for public review and copying approximately 30 days following the meeting at the Freedom of Information Public Reading Room, 1E–190 Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C., between 9:00 a.m. and 4:00 p.m., Monday through Friday except Federal holidays. Information on the Laboratory Operations Board may also be found at the Secretary of Energy Advisory Board's web site, located at http://www.hr.doe.gov/seab.

Issued at Washington, D.C., on November 17, 1997.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 97–30509 Filed 11–19–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Secretary of Energy Advisory Board; Notice of Open Meeting

AGENCY: Department of Energy.

SUMMARY: Consistent with the provisions of the Federal Advisory Committee Act (Public L. No. 92–463, 86 Stat. 770), notice is hereby given of the following advisory committee meeting:

Name: Secretary of Energy Advisory Board—Openness Advisory Panel.

Date and Time: Wednesday, December 3, 1997, 9:00 A.M.—4:00 P.M.

Address: Jefferson Hotel, Monticello Room, 1200 16th Street, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Richard C. Burrow, Secretary of Energy Advisory Board (AB–1), US Department of Energy, 1000 Independence Avenue, SW, Washington, D.C. 20585, (202) 586–1709.

SUPPLEMENTARY INFORMATION: Purpose of the Openness Advisory Panel: To provide advice to the Secretary of Energy Advisory Board regarding the status and strategic direction of the Department's classification and declassification policies and programs, and other aspects of the Department's ongoing Openness Initiative. The Panel's work will help institutionalize the Department's Openness Initiative.

Tentative Agenda

Wednesday, December 3, 1997

9:00–9:30 AM
Opening Remarks & Introductions—R. Meserve, Chairman
9:30–10:00 AM
Subgroup Report: Assessment of the Yucca Mountain Site's Electronic Records Management System—T. Wade & E. Willis, OAP Members
10:00–10:45 AM
Status Report: Records Management Implementation Strategy & Status—S.W. Hall, DOE Chief Information Officer
10:45–11:00 AM
Break
11:00–11:45 AM
Status Report: Declassification Implementation Strategy & Status—Brian Siebert, DOE Office of Declassification
11:45–12:00 PM
Public Comment
12:00–1:00 PM
Lunch
1:00–2:00 PM
Panel Discussion: Records Management ''Best Practices'': the Field Management Perspective—Guest Panelists & OAP Members
2:00–2:15 PM
Break
2:15–3:30 PM
Working Session: Discussion of the OAP Work Plan
3:30–4:00 PM
Public Comment
4:00 PM
Adjourn

This tentative agenda is subject to change. A final agenda will be available at the meeting.

Public Participation

The Chairman of the Panel is empowered to conduct the meeting in a way which will, in the Chairman's judgment, facilitate the orderly conduct of business. During its meeting in Washington, D.C. the Panel welcomes public comment. Members of the public will be heard in the order in which they sign up at the beginning of the meeting. The Panel will make every effort to hear the views of all interested parties. Written comments may be submitted to Skila Harris, Executive Director, Secretary of Energy Advisory Board, AB–1, US Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585. This notice is being published less than 15 days before the date of the meeting due to programmatic issues that had to be resolved prior to publication.

Minutes and Transcript

Available for public review and copying approximately 30 days following the meeting at the Freedom of Information Public Reading Room, 1E–190 Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C., between 9:00 A.M. and 4:00 P.M., Monday through Friday except Federal holidays. Information on the Openness Advisory Panel may also be found at the Secretary of Energy Advisory Board's web site, located at http://www.hr.doe.gov/seab.

Issued at Washington, D.C., on November 17, 1997.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 97–30537 Filed 11–19–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–5–009]

Algonquin Gas Transmission Company; Notice of Compliance Filing

November 14, 1997.

Take notice that on November 12, 1997, Algonquin Gas Transmission Company (Algonquin) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following tariff sheets, to become effective November 1, 1997:

Sub Third Revised Sheet No. 714
Sub Original Sheet No. 715

Algonquin asserts that the purpose of this filing is to comply with the Federal Energy Regulatory Commission's Letter Order issued October 27, 1997, in Docket No. RP97–5–008, which required Algonquin to file substitute tariff sheets reflecting the correct version numbers for GISB standards incorporated by reference on Sheet Nos. 714 and 715.

Algonquin states that the above listed tariff sheets contain the modifications required by the October 27, 1997 letter order.

Algonquin states that copies of the filing were served on all affected parties.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30459 Filed 11–19–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP97–90–004 and RP97–99–005]

Algonquin LNG, Inc., Notice of Compliance Filing

November 14, 1997.

Take notice that on November 12, 1997, Algonquin LNG, Inc. (ALNG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Sub First Revised Sheet No. 83 to be effective November 1, 1997.

ALNG asserts that the purpose of this filing is to comply with the Commission's Letter Order issued on October 30, 1997, in Docket Nos. RP97–90–002, 003 and RP97–99–003, 004 which required ALNG to reflect the proper version numbers for GISB standards incorporated by reference on Sheet No. 83.

ALNG states that Sub First Revised Sheet No. 83 contains the modifications required by the October 30, 1997 letter order.

ALNG states that copies of this filing were served on all affected parties.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30454 Filed 11–19–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–43–000]

Anadarko Gathering Company; Notice of Statements of Refunds Due

November 14, 1997.

Take notice that on November 10, 1997, Anadarko Gathering Company (Anadarko) pursuant to the Commission's Order dated September 10, 1997, in Public Service Company of Colorado, *et al.*, Docket No. RP97–369–000, *et al.*, tendered for filing its statements which relate to the Cimarron River System, an asset acquired by the Anadarko's parent in 1994.

Anadarko states that copies of this filing have been served on the person or persons indicated in the letters and on Kansas Corporation Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such petitions or protests should be filed on or before November 21, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make Protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30435 Filed 11–19–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–42–000]

ANR Pipeline Company; Notice of Statements of Refunds Due

November 14, 1997.

Take notice that on November 10, 1997, ANR Pipeline Company (ANR) tendered for filing its Statement of Refunds Due as a result of the Commission's September 10, 1997 Order issued in Docket Nos. RP97–369–000, GP97–3–000, GP97–4–000 and GP97–5–000.

The order directed first sellers of natural gas to refund, including interest, any revenues collected in excess of the maximum applicable lawful price established under the Natural Gas Policy Act of 1978 as a result of the reimbursement of the Kansas ad valorem tax during the period October 3, 1983 through June 28, 1988. Ordering paragraph (B) requires pipelines to furnish first sellers a Statement of Refunds Due by November 10, 1997 and to file a copy of such Statement with the Commission.

ANR states that refunds owed ANR from Kansas producers, who charged in excess of the applicable maximum lawful price established by the NGPA for the period October 4, 1983 through June 28, 1988, total $409,902.77 of principal and $777,829.16 of associated interest, for a total refund due ANR of $1,187,731.93.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such petitions or protests should be filed on or before November 21, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make Protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30436 Filed 11–19–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–172–008]

ANR Storage Company, Notice of Compliance Filing

November 14, 1997.

Take notice that on November 7, 1997, ANR Storage Company (ANR) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the tariff sheets listed on Appendix A to the filing, to be effective November 1, 1997.

ANR states that the attached tariff sheets are being filed in compliance with the Commission's Order issued on October 24, 1997 in the above captioned docket.

ANR states that copies of the filing were served upon the company's Jurisdictional customers.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the

Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30448 Filed 11–19–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–170–008]

Blue Lake Gas Storage Company; Notice of Compliance Filing

November 14, 1997.

Take notice that on November 7, 1997, Blue Lake Gas Storage Company (Blue Lake) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, to be effective November 1, 1997.

Blue Lake states that the attached tariff sheets are being filed in compliance with the Commission's Order issued on October 27, 1997 in the above captioned docket.

Blue Lake states that copies of the filing was served upon the company's Jurisdictional customer.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30449 Filed 11–19–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–13–001]

Boundary Gas, Inc.; Notice of Proposed Changes in FERC Gas Tariff

November 14, 1997.

Take notice that on November 7, 1997, Boundary Gas, Inc. (Boundary) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets to become effective November 1, 1997.

First Revised Sheet No. 12
First Revised Sheet No. 13

Boundary states that the purpose of this filing is to comply with the Commission's October 29, 1997 Order in this proceeding by revising its tariff to include a reference to the document which contains a protocol describing the implementation of a pipeline rate refund mechanism. Boundary also states that copies of this filing were served upon all persons designated by the Commission to receive service in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with 18 CFR 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30441 Filed 11–19–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT98–4–000]

Distrigas of Massachusetts; Notice of Proposed Changes in FERC Gas Tariff

November 14, 1997.

Take notice that on November 12, 1997, Distrigas of Massachusetts Corporation (DOMAC) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheet, to become effective December 1, 1997:

Third Revised Sheet No. 94

DOMAC states that the purpose of this filing is to record a change in DOMAC's index of customers.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not served to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30462 Filed 11–19–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–58–009]

East Tennessee Natural Gas Company; Notice of Compliance Filing

November 14, 1997.

Take notice that on November 7, 1997, East Tennessee Natural Gas Company (East Tennessee), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, with an effective date of November 1, 1997:

Third Revised Sheet No. 102
Sub Third Revised Sheet No. 176

East Tennessee states that these sheets are filed in compliance with the Commission's October 30, 1997 Letter Order in the above-referenced docket (October 30 Letter Order).

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street N.E., Washington, D.C. 20426, in accordance with 18 CFR 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission

in determining the appropriate action to be taken, but will not serve to make protestants parties to this proceeding. Copies of this filing are on file with the Commission and available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30457 Filed 11–19–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–44–000]

El Paso Natural Gas Company; Notice of Statements of Refunds Due

November 14, 1997.

Take notice that on November 10, 1997, El Paso Natural Gas Company (El Paso) tendered for filing its Statement of Refunds Due provided to Vastar Gas Marketing, Inc., successor-in-interest to Arco Oil & Gas Company, in accordance with the Commission's order issued September 10, 1997 at Docket No. RP97–369–000, et al.

The order directed first sellers of natural gas to refund, including interest, any revenues collected in excess of the maximum applicable lawful price established under the Natural Gas Policy Act of 1978 as a result of the reimbursement of the Kansas ad valorem tax during the period October 3, 1983 through June 28, 1988. Ordering paragraph (B) requires pipelines to furnish first sellers a Statement of Refunds Due by November 10, 1997 and to file a copy of such Statement with the Commission.

El Paso states that on November 10, 1997 it furnished Vastar Gas Marketing, Inc. the Statement of Refunds Due indicating a total refund due of $53,836.13, including interest through November 9, 1997.

El Paso states that copies of this filing have been served upon all parties of record in this proceeding and all shippers on El Paso's system and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such petitions or protests should be filed on or before November 21, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30434 Filed 11–19–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–37–000]

El Paso Natural Gas Company; Notice of Revenue Credit Report

November 14, 1997.

Take notice that on November 6, 1997, El Paso Natural Gas Company (El Paso), tendered for filing its report detailing El Paso's crediting of revenues to eligible shippers for the calendar year 1996.

El Paso states that the report details El Paso's crediting of risk sharing revenues for the calendar year 1996 in accordance with Section 25.3 of the General Terms and Conditions of its Volume No. 1–A Tariff.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Regulations. All such motions or protests must be filed on or before November 21, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make Protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30440 Filed 11–19–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT98–3–000]

El Paso Natural Gas Company; Notice of Tariff Filing

November 14, 1997.

Take notice that on November 10, 1997, El Paso Natural Gas Company (El Paso) tendered for filing a Transportation Service Agreement (TSA) between El Paso and Pemex Gas y Petroquimica Basica (Pemex) and Fifth Revised Sheet No. 1 to its FERC Gas Tariff, Second Revised Volume No. 1–A.

El Paso states that it is submitting the TSA for Commission approval since the TSA contains a payment provision which differs from El Paso's Volume No. 1–A Form of Transportation Service Agreements and General Terms and Conditions. The TSA and the tariff sheet, which references the TSA, are proposed to become effective on December 10, 1997.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30463 Filed 11–19–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–69–000]

Garden Banks Gas Pipeline, LLC, Notice of Request Under Blanket Authorization

November 14, 1997.

Take notice that on November 5, 1997, Garden Banks Gas Pipeline, LLC, (GBGP) 701 Poydras, New Orleans, Louisiana filed in the above docket an application, pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the

Natural Gas Act (NGA) (18 CFR 157.205 and 157.212) for authorization to establish a new delivery point at Garden Banks Block 128 ''A'' Platform. GBGP states that it will construct and operate the new delivery point under the blanket certificate issued in Docket Nos. CP96–678–000 and CP96–679–000 , all as more fully set forth in the request which is file with the Commission and open to public inspection.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity is deemed to be authorized effective on the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30464 Filed 11–19–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–41–000]

Koch Gateway Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

November 14, 1997.

Take notice that on November 10, 1997, Koch Gateway Pipeline Company (Koch) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets, to become effective January 1, 1997:

Eleventh Revised Sheet No. 1
Twenty-first Revised Sheet No. 20
Eighteenth Revised Sheet No. 21
Nineteenth Revised Sheet No. 22
Twenty-first Revised Sheet No. 24
Third Revised Sheet No. 1414
Fourth Revised Sheet No. 3200
Second Revised Sheet No. 3201

Koch states that this filing is being submitted to remove the GRI Surcharge from its rates and the GRI provisions contained in the General Terms and Conditions.

Koch also states that it has served copies of this filing upon each person designated on the official service list as compiled by the Secretary in this proceeding.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's rules and regulations. All such motions or protests must be filed as provided by Section 154.210 of the Commission's rules and regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a part must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30437 Filed 11–19–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–152–005]

Michigan Gas Storage Company; Notice of Proposed Changes in FERC Gas Tariff

November 14, 1997.

Take notice that on November 12, 1997, Michigan Gas Storage Company (MGSCO) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, three tariff sheets (Sheet Nos. 1, 41A, and 54A) with effective dates of June 1, 1997 and another revised tariff sheet (No. 54A) with an effective date of November 1, 1997.

MGSCO states that this filing is made in compliance with the letter order issued on October 27, 1997, in Docket Nos. RP97–152–003 and –004. MGSCO states that these tariff sheets reflect the correct pagination as required by the Commission, and the incorporation of GISB standards 1, 2, 3 and 5, Version 1.1 and GISB standard 4, Version 1.0.

MGSCO also notes that although these tariff sheets are being filed with effective dates of June 1, 1997 and November 1, 1997, the Commission has granted MGSCO an extension of time for implementation of certain of the GISB standards incorporated within these tariff sheets, to and including February 1, 1998.

MGSCO states that copies of this filing are being served on all customers and applicable state regulatory agencies and on all those on the official service list in Docket No. RP97–152–000. Any person desiring to protest this filing should file a protest with the Federal Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30450 Filed 11–19–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–59–010]

Midwestern Gas Transmission Company; Notice of Compliance Filing

November 14, 1997.

Take notice that on November 7, 1997, Midwestern Gas Transmission Company (Midwestern), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets:

Second Revised Sheet No. 54
Sub Third Revised Sheet No. 110A

Midwestern states that these sheets are filed in compliance with the Commission's October 24, 1997 Letter Order in the above-referenced docket (October 24 Letter Order). In accordance with the October 24 Letter Order, Midwestern requests an effective date of November 1, 1997.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with 18 CFR 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make

protestants parties to this proceeding. Copies of this filing are on file with the Commission and available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30456 Filed 11–19–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–526–002]

Mississippi River Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

November 14, 1997.

Take notice that on November 7, 1997, Mississippi River Transmission Corporation (MRT) tendered for filing Second Substitute Third Revised Sheet No. 9 as part of its FERC Gas Tariff, Third Revised Volume No. 1 to be effective October 25, 1997.

MRT states that the purpose of this filing is to comply with the letter order issued in this docket on October 24, 1997.

Any person desiring to protect this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with 18 CFR 385.211 of the Commission's Rules and Regulations. All such protects must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30442 Filed 11–19–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–38–000]

Natural Gas Pipeline Company of America; Notice of Statements of Refunds Due and Request for Waiver

November 14, 1997.

Take notice that on November 10, 1997, Natural Gas Pipeline Company of America (Natural) tendered for filing its Statements of Refunds Due (Statements) with respect to the Kansas *ad valorem* tax relating to Natural's gas purchases for the period of October 3, 1983, through June 28, 1988. Natural states that each statement was served upon the affected First Seller. Filing of such Statements is required by Ordering Paragraph (B) of the Commission's Order issued in the referenced docket on September 10, 1997.

Natural states that in addition to submitting the Statements, Natural is requesting that the Commission grant to Natural a waiver of Ordering Paragraphs (D), (E) and (F) of the September 10 Order. Those provisions of the September 10 Order require that pipelines refund any amounts collected pursuant to such Statements.

Natural states that copies of this filing have been served on Natural's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such petitions or protests should be filed on or before November 21, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make Protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30439 Filed 11–19–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC97–52–000]

New York State Electric & Gas Corporation; Notice of Filing

November 14, 1997.

Take notice that on November 7, 1997, New York State Electric & Gas Corporation (NYSEG), tendered for filing a supplement to its application filed in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before November 21, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–30465 Filed 11–19–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–39–000]

Northern Natural Gas Company; Notice of Statements of Refunds Due

November 14, 1997.

Take notice that on November 10, 1997, Northern Natural Gas Company (Northern) pursuant to the Commission's Order dated September 10, 1997, in Public Service Company of Colorado, *et al.*, Docket No. RP97–369–000, *et al.*, tendered for filing its Statements of Refunds Due with respect to First Sellers having a refund obligation related to Kansas *ad valorem* taxes for the period of October 4, 1983, through June 28, 1988. Northern states that Schedule No. 1 attached to the filing, listing the name of the First Sellers, the principal and interest amounts owed and the total refund obligation.

Northern states that copies of this filing have been served upon each person designated on the official service list compiled by the Secretary in Docket Nos. RP97–369–000, GP97–3–000, GP97–4–000 and GP97–5–000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such petitions or protests should be filed on or before November 21, 1997. Protests will be considered by

the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30438 Filed 11–19–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–224–011]

Sea Robin Pipeline Company; Notice of Proposed Changes to FERC Gas Tariff

November 14, 1997.

Take notice that on November 12, 1997, Sea Robin Pipeline Company (Sea Robin) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised Tariff sheets, with an effective date of November 1, 1997:

Second Substitute Third Revised Sheet No. 95

Sea Robin states that the tariff sheet is being filed in compliance with the Commission's Order No. 587–C, the Commission's June 27, 1997 Order and the Commission's October 27, 1997, Letter Order in this docket, to become effective November 1, 1997.

On April 30, 1997, Sea Robin made a pro forma compliance filing in response to Commission Order No. 587–C in order to implement certain GISB standards. On June 27, 1997, the Commission issued an order accepting Sea Robin's filing subject to certain conditions. On October 1, 1997, Sea Robin made a compliance filing incorporating the Commission's directives and the Commission approved such compliance filing with one exception by letter order dated October 27, 1997. The Commission's October 27 letter order required Sea Robin correct the version designations of the GISB standards it incorporates by reference under Section 28 of the General Terms and Conditions. In response to the October 27 letter order, Sea Robin has filed the tariff sheet with the corrected GISB standard version designation.

In addition, Sea Robin has added to Sheet No. 95 the incorporation by reference of the Model Trading Partner Agreement which was approved by Commission Letter Order dated July 3, 1997, in Docket No. RP97–224–005. Sea Robin requests an effective date of November 1, 1997. Sea Robin states that such effective date is appropriate because it is consistent with Sea Robin's April 30 tariff filing, and the timeline established in Order No. 587–C.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules of Practice and Procedures.

All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30446 Filed 11–19–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP95–167–006]

Sea Robin Pipeline Company; Notice of Compliance Filing

November 14, 1997.

Take notice that on November 10, 1997 Sea Robin Pipeline Company (Sea Robin) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, to become effective as described below.

Second Revised Fourth Revised Sheet No. 7
Third Revised Fourth Revised Sheet No. 7
First Revised First Substitute Fifth Revised Sheet No. 7
First Revised First Substitute Sixth Revised Sheet No. 7
First Revised Fourth Revised Sheet No. 8
First Substitute Fifth Revised Sheet No. 8
First Revised First Substitute Sixth Revised Sheet No. 8
First Revised Fourth Revised Sheet No. 9
First Substitute Fifth Revised Sheet No. 9
First Revised First Substitute Sixth Revised Sheet No. 9

Sea Robin Asserts that the purpose of this filing is to comply with the Commission's order issued November 3, 1997 in Docket No. RP95–167–004 (November 3, Order).

On December 31, 1996, Sea Robin filed a Stipulation and Agreement (Stipulation) in Docket No. RP95–167 under which it intended to resolve all of the issues in the proceeding and to implement revised rates effective January 1, 1997. The Stipulation Lowered Sea Robin's interruptible transportation (IT) rate from $0.0842/Dth to $0.08/Dth and lowered its firm transportation (FT) demand rate from $2.39/Dth to $2.26/Dth and FT commodity rate from $0.0126/Dth to $0.004/Dth (Settlement Rates). On April 22, 1997, the Commission issued its ''Order on Settlement, Establishing Just and Reasonable Rates'' (April 22 Order), which required Sea Robin to reduce both its existing rates and Settlement Rates under Section 5(a) of the Natural Gas Act, 15 U.S.C. 717d(a) (1996). On rehearing of the April 22 Order, however, the Commission issued its November 3 Order, which accepted the Settlement Rates as just and reasonable. Under the November 3 Order, the Settlement Rates become effective for contesting parties on May 1, 1997 and for non-contesting parties on January 1, 1997.

As required by the November 3 Order, Sea Robin submits the revised Tariff sheets (1) to place Settlement Rates into effect for non-contesting parties as of January 1, 1997; (2) to maintain the pre-Stipulation rates for contesting parties through April 30, 1997; (3) to place Settlement Rates into effect for all parties as of May 1, 1997; and (4) to implement Gas Industry Standards Board standards and Annual Charge Adjustment surcharges, effective the dates these standards and revised surcharges were implemented, for the services to which these rates apply.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30461 Filed 11–19–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–177–007]

Steuben Gas Storage Company; Notice of Compliance Filing

November 14, 1997.

Take notice that on November 7, 1997, Steuben Gas Storage Company (Steuben) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the tariff sheets listed on Appendix A to the filing, to be effective November 1, 1997.

Steuben states that the tariff sheets are being filed in compliance with the Commission's Order issued on October 27, 1997 in the above Captioned docket.

Steuben states that copies of the filing were served upon the company's Jurisdictional customers.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30447 Filed 11–19–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–143–008]

TCP Gathering Co.; Notice of Tariff Filing

November 14, 1997.

Take notice that on November 10, 1997, TCP Gathering Co. (TCP) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following revised tariff sheet, to be effective November 1, 1997:

Original Sheet No. 103A

TCP states that this tariff sheet is being filed to correct an error in pagination as noted in the Office of Pipeline Regulation letter order, issued on October 29, 1997, in Docket No. RP97–143–007.

TCP states that copies of the filing were served upon TCP's jurisdictional customers, interested public bodies, and all parties to the proceedings.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR Section 385.211). All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30453 Filed 11–19–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–60–010]

Tennessee Gas Pipeline Company; Notice of Compliance Filing

November 14, 1997.

Take notice that on November 7, 1997, Tennessee Gas Pipeline Company (Tennessee), tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets:

Second Revised Sheet No. 302
Fifth Revised Sheet No. 316
Second Revised Sheet No. 357
Sub Fourth Revised Sheet No. 412

Tennessee states that these sheets are filed in compliance with the Commission's October 28, 1997 Letter Order in the above-referenced docket (October 28 Letter Order). In accordance with the October 28 Letter Order, Tennessee requests an effective date of November 1, 1997.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with 18 CFR 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30455 Filed 11–19–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–3–009]

Texas Eastern Transmission Corporation; Notice of Compliance Filing

November 14, 1997.

Take notice that on November 12, 1997, Texas Eastern Transmission Corporation (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following tariff sheet, to become effective November 1, 1997:

Sub Third Revised Sheet No. 681.

Texas Eastern asserts that the purpose of this filing is to comply with the Commission's Letter Order issued October 27, 1997, in Docket No. RP97–3–008, which required Texas Eastern to file a substitute tariff sheet reflecting the correct version numbers for GISB standards incorporated by reference on Sheet No. 681

Texas Eastern states that the above listed tariff sheet contains the modifications required by the October 27, 1997 letter order.

Texas Eastern states that copies of the filing were served on all affected parties.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30460 Filed 11–19–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–408–001]

Trailblazer Pipeline Company; Notice of Compliance Filing

November 14, 1997.

Take notice that on August 25, 1997, Trailblazer Pipeline Company, (Trailblazer) tendered for filing recalculated rates and work papers as directed by the Commission in ordering paragraph C of the Commission's order issued July 31, 1997, in Docket No. RP97–408–000.

Trailblazer states that copies of its filing have been served upon all parties on the Official Service List in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules of Practice and Procedure. All such protests must be filed on or before November 21, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30444 Filed 11–19–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–18–010]

Transwestern Pipeline Company; Notice of Compliance Filing

November 14, 1997.

Take notice that on November 10, 1997, Transwestern Pipeline Company (Transwestern), tendered for filing to become part of Transwestern's FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheet, proposed to be effective November 1, 1997:

Substitute Fifth Revised Sheet No. 49

Transwestern states that the instant filing is made in compliance with the Commission's Letter Order issued October 27, 1997 in Docket No. RP97–18–009 directing Transwestern to include the unaddressed Gas Industry Standards Board (''GISB'') standards in its Tariff.

Transwestern further states that copies of the filing were served upon Transwestern's customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. All protests will be considered by the Commission in determining the appropriate action to be taken in this proceeding, but will not serve to make Protestant a party to the proceeding. Copies of this filing are on file with the Commission and are available for inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30458 Filed 11–19–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–428–002]

Tuscarora Gas Transmission Company; Notice of Compliance Filing

November 14, 1997.

Take notice that on November 12, 1997, Tuscarora Gas Transmission Company (Tuscarora) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheet to become effective August 27, 1997:

2 Sub First Revised Sheet No. 85

Tuscarora states that the filing is being made in compliance with the OPR Letter Order dated October 27, 1997.

Tuscarora asserts that the purpose of this filing is to clarify that an existing shipper can retain capacity by either matching the best bid or by matching the rate contained in the best bid for a period of at least five years.

Tuscarora states that copies of this filing were mailed to all customers of Tuscarora, interested state regulatory agencies and the service list in Docket No. RP97–428–000.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30443 Filed 11–19–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–45–000]

Williams Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

November 14, 1997.

Take notice that on November 12, 1997, Williams Natural Gas Company (WNG) tendered for filing a report made pursuant to Article 14.1 of the General Terms and Conditions of its FERC Gas Tariff, Second Revised Volume No. 1.

WNG states that Article 14.1 of the General Terms and Conditions of its FERC Gas Tariff requires WNG to file a report showing the total actual amounts billed to each customer to be filed at the end of the amortization period. WNG began billing unrecovered purchased gas costs, pursuant to Commission order issued July 20, 1994, in Docket No. RP94–296–000. The amortization period ended in September, 1997.

WNG states that a copy of its filing was served on all WNG's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public

inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30433 Filed 11–19–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–375–002]

Wyoming Interstate Company, Ltd.; Notice of Compliance Filing

November 14, 1997.

Take notice that on July 28, 1997, Wyoming Interstate Company, (WIC) tendered for filing recalculated rates and work papers as directed by the Commission in ordering paragraph C of the Commission's order issued June 27, 1997, in Docket No. RP97–375–000.

WIC states that copies of the filing have been served upon each of WIC customer and public bodies as set forth on the Official Service List.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules of Practice and Procedure. All such protests must be filed on or before November 21, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30445 Filed 11–19–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC98–19–000, et al.]

Electric Rate and Corporate Regulation Filings; Entergy Arkansas, Inc., et al.

November 13, 1997.

Take notice that the following filings have been made with the Commission:

1. Entergy Arkansas, Inc.

[Docket No. EC98–19–000]

Take notice that on November 6, 1997, Entergy Arkansas, Inc. (Entergy) filed an application under Section 203 of the Federal Power Act to transfer certain jurisdictional facilities to the Conway Corporation, an Arkansas not-for-profit corporation which operates the electric and water systems of the City of Conway, Arkansas.

Comment date: December 8, 1997, in accordance with Standard Paragraph E at the end of this notice.

2. J. Makowski Company, Inc. and TransCanada OSP Holdings Ltd.

[Docket No. EC98–17–000]

Take notice that J. Makowski Company, Inc. (JMC) and TransCanada OSP Holdings Ltd. (TCOSP) on November 5, 1997, tendered for filing an Application requesting Commission approval for a disposition of facilities under Section 203 of the Federal Power Act (FPA) in connection with the sale of certain upstream ownership interests in Ocean State Power and Ocean State Power II, which are public utilities under Section 201 of the FPA.

Comment date: December 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

3. USGen New England, Inc., TransCanada OSP Holdings Ltd. and TransCanada Power Marketing Ltd.

[Docket No. EC98–18–000]

Take notice that USGen New England, Inc. (USGenNE), TransCanada OSP Holdings Ltd. (TCOSP) and TransCanada Power Marketing Ltd. (TCPM) on November 6, 1997, tendered for filing an Application requesting Commission approval for (1) a disposition of facilities under Section 203 of the Federal Power Act (FPA) in connection with the sale of certain upstream ownership interests in Ocean State Power and Ocean State Power II, which are public utilities under Section 201 of the FPA and (2) the sale of USGenNE's rights and obligations under various power sales agreements to TCPM.

Comment date: December 8, 1997, in accordance with Standard Paragraph E at the end of this notice.

4. The Toledo Edison Company

[Docket No. ER97–2125–000]

Take notice that on November 5, 1997, The Toledo Edison Company tendered for filing an amendment in the above-referenced docket.

Comment date: December 8, 1997, in accordance with Standard Paragraph E at the end of this notice.

5. PECO Energy Company

[Docket No. ER98–321–000]

Take notice that on October 27, 1997, PECO Energy Company (PECO) filed an executed Installed Capacity Obligation Allocation Agreement between PECO and Pennsylvania Power & Light Co. (hereinafter Supplier). The terms and conditions contained within this Agreement are identical to the terms and conditions contained with the Form of Installed Capacity Allocation Agreement filed by PECO with the Commission on October 3, 1997, at Docket No. ER98–28–000. This filing merely submits an individual executed copy of the Installed Capacity Obligation Allocation Agreement between PECO and an alternate supplier participating in PECO's Pilot.

Copies of the filing were served on the Supplier and the Pennsylvania Public Utility Commission.

Comment date: November 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. PECO Energy Company

[Docket No. ER98–322–000]

Take notice that on October 27, 1997, PECO Energy Company (PECO) filed an executed Transmission Agency Agreement between PECO and Bruin Energy Inc./Mack Services Group (hereinafter Supplier). The terms and conditions contained within this Agreement are identical to the terms and conditions contained with the Form of Transmission Agency Agreement submitted to the Commission on October 3, 1997 as part of the joint filing by the Pennsylvania Public Utility Commission and the Pennsylvania PJM Utilities at Docket No. ER98–64–000. This filing merely submits an individual executed copy of the Transmission Agency Agreement between PECO and an alternative supplier participating in PECO's Retail Access Pilot Program.

Copies of the filing were served on the Supplier and the Pennsylvania Public Utility Commission.

Comment date: November 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. The Detroit Edison Company

[Docket No. ER98–323–000]

Take notice that on October 27, 1997, The Detroit Edison Company tendered for filing its report of transactions for the second calender quarter of 1997.

Comment date: November 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. Kentucky Utilities Company

[Docket No. ER98–324–000]

Take notice that on October 24, 1997, Kentucky Utilities Company (KU), tendered for filing service agreements between KU and QST Energy Trading

Inc. and USGen Power Services, L.P. under its Transmission Services (TS) Tariff and with QST Energy Trading Inc. and USGen Power Services, L.P. under its Power Services (PS) Tariff.

Comment date: November 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. Additional Signatories to PJM Interconnection, L.L.C. Operating Agreement

[Docket No. ER98–325–000]

Take notice that on October 27, 1997, the PJM Interconnection, L.L.C. (PJM) filed, on behalf of the Members of the LLC, membership applications of AEP Service Corporation, Allegheny Power, Cleveland Electric Illuminating Company, CNG Retail Services Corporation, Market Responsive Energy, Inc., and Woodruff Energy. PJM requests an effective date of October 28, 1997.

Comment date: November 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. Central Louisiana Electric Company, Inc.

[Docket No. ER98–327–000]

Take notice that on October 27, 1997, Central Louisiana Electric Company, Inc. (CLECO), tendered for filing CLECO's Market Based Rate Tariff MR–1, the quarterly report for transactions untaken by CLECO for the quarter ending September 30, 1997.

CLECO states that a copy of the filing has been served on the Louisiana Public Service Commission.

Comment date: November 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. Cleveland Electric Illuminating Company and The Toledo Edison Company

[Docket No. ER98–329–000]

Take notice that on October 27, 1997, the Centerior Service Company as Agent for The Cleveland Electric Illuminating Company and The Toledo Edison Company filed Service Agreements to provide Non-Firm Point-to-Point Transmission Service for GPU Energy and Williams Energy Services Company, the Transmission Customers. Services are being provided under the Centerior Open Access Transmission Tariff submitted for filing by the Federal Energy Regulatory Commission in Docket No. OA96–204–000. The proposed effective dates under the Service Agreements are October 17, 1997 and November 1, 1997 respectively.

Comment date: November 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. Cleveland Electric Illuminating Company and The Toledo Edison Company

[Docket No. ER98–330–000]

Take notice that on October 27, 1997, the Centerior Service Company as Agent for The Cleveland Electric Illuminating Company and The Toledo Edison Company filed Service Agreements to provide Firm Point-to-Point Transmission Service for Carolina Power & Light Company and Williams Energy Services Company, the Transmission Customers. Services are being provided under the Centerior Open Access Transmission Tariff submitted for filing by the Federal Energy Regulatory Commission in Docket No. OA96–204-000. The proposed effective dates under the Service Agreements are November 1, 1997.

Comment date: November 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. Atlantic City Electric Company

[Docket No. ER98–331–000]

Take notice that on October 27, 1997, Atlantic City Electric Company (AE) tendered for filing its 3rd Quarter 1997, Summary Report of all AE transactions made pursuant to the market-based rate power service tariff.

Comment date: November 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. Central Louisiana Electric Company, Inc.

[Docket No. ER98–332–000]

Take notice that on October 28, 1997, Central Louisiana Electric Company, Inc., (CLECO), tendered for filing an umbrella service agreement under which CLECO will make market based power sales under its MR–1 tariff with Arizona Public Service Company.

CLECO states that a copy of the filing has been served on Arizona Public Service Company.

Comment date: November 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

15. PP&L, Inc.

[Docket No. ER98–333–000]

Take notice that on October 28, 1997, PP&L, Inc., formerly known as Pennsylvania Power & Light Company, filed a Quarterly Transaction Report notifying the Commission that it did not engage in any transactions under its market-based rates tariff, FERC Electric Tariff, Original Volume No. 5, during the quarter ending September 30, 1997.

Comment date: November 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

16. Central Louisiana Electric Company, Inc.

[Docket No. ER98–334–000]

Take notice that on October 28, 1997, Central Louisiana Electric Company, Inc., (CLECO), tendered for filing an umbrella service agreement under which CLECO will make market based power sales under its MR–1 tariff with Cinergy Services, Inc., as agent for the Cinergy Operating Companies.

CLECO states that a copy of the filing has been served on Cinergy Services, Inc.

Comment date: November 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

17. Central Louisiana Electric Company, Inc.

[Docket No. ER98–335–000]

Take notice that on October 28, 1997, Central Louisiana Electric Company, Inc., (CLECO), tendered for filing two service agreements under which CLECO will provide non-firm and short term firm point-to-point transmission services to The Cincinnati Gas & Electric Company, PSI Energy, Inc., and Cinergy Services, Inc., under its point-to-point transmission tariff.

CLECO states that a copy of the filing has been served on The Cincinnati Gas & Electric Company, PSI Energy, Inc., and Cinergy Services, Inc.

Comment date: November 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

18. The Dayton Power and Light Company

[Docket No. ER98–337–000]

Take notice that on October 28, 1997, The Dayton Power and Light Company (Dayton), submitted service agreements establishing The Energy Authority, Inc., GPU Energy, New Energy Ventures LLC, PP&L, Inc., Southern Companies, QST Energy, Inc., Stand Energy Corp., as a customer under the terms of Dayton's Market-Based Sales Tariff.

Dayton requests an effective date of one day subsequent to this filing for the service agreements. Accordingly, Dayton requests waiver of the Commission's notice requirements. Copies of the filing were served upon The Energy Authority, Inc., GPU Energy, New Energy Ventures LLC, PP&L, Inc., Southern Companies, QST Energy, Inc., Stand Energy Corp., and the Public Utilities Commission of Ohio.

Comment date: November 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

19. The Dayton Power and Light Company

[Docket No. ER98–338–000]

Take notice that on October 28, 1997, The Dayton Power and Light Company (Dayton) submitted service agreements establishing QST Energy Trading Inc., as customers under the terms of Dayton's Open Access Transmission Tariff.

Dayton requests an effective date of one day subsequent to this filing for the service agreements. Accordingly, Dayton requests waiver of the Commission's notice requirements. Copies of the filing were served upon establishing QST Energy Trading, Inc., and the Public Utilities Commission of Ohio.

Comment date: November 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

20. Wisconsin Public Service Corporation

[Docket No. ER98–339–000]

Take notice that on October 28, 1997, Wisconsin Public Service Corporation (WPSC), tendered for filing Supplement No. 9, to its partial requirements service agreement with Manitowoc Public Utilities (MPU), Manitowoc County, Wisconsin. Supplement No. 9, provides MPU's contract demand nominations for January 1998—December 2002, under WPSC's W–2 partial requirements tariff and MPU's applicable service agreement.

The WPSC states that copies of this filing have been served upon MPU and to the State Commissions where WPSC serves at retail.

Comment date: November 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

21. Virginia Electric and Power Company

[Docket No. ER98–340–000]

Take notice that on October 28, 1997, Virginia Electric and Power Company (Virginia Power), tendered for filing a Service Agreement for Non-Firm Point-to-Point Transmission Service with American Energy Solutions, Inc., under the Open Access Transmission Tariff to Eligible Purchasers dated July 9, 1996. Under the tendered Service Agreement, Virginia Power will provide non-firm point-to-point service to the Transmission Customer under the rates, terms and conditions of the Open Access Transmission Tariff.

Copies of the filing were served upon American Energy Solutions, the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: November 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

22. MidAmerican Energy Company

[Docket No. ER98–341–000]

Take notice that on October 28, 1997, MidAmerican Energy Company (MidAmerican), 666 Grand Avenue, Des Moines, Iowa 50309, filed with the Commission two Non-Firm Transmission Service Agreements with Northern States Power Company (NSP) dated October 9, 1997 and Tennessee Valley Authority (TVA) dated October 14, 1997, entered into pursuant to MidAmerican's Open Access Transmission Tariff.

MidAmerican requests an effective date of October 9, 1997, for the Agreement with NSP and October 14, 1997, for the Agreement with TVA, and accordingly seeks a waiver of the Commission's notice requirement. MidAmerican has served a copy of the filing on NSP, TVA, the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: November 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

23. New York State Electric & Gas Corporation

[Docket No. ER98–342–000]

Take notice that on October 28, 1997, New York State Electric & Gas Corporation (NYSEG), tendered for filing pursuant to Part 35 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, 18 CFR Part 35, service agreements under which NYSEG may provide capacity and/or energy to Commonwealth Edison (Commonwealth), ConAgra Energy Services, Inc. (ConAgra), and Wisconsin Electric Power Company (WEPCo)(collectively, the Purchasers) in accordance with NYSEG's FERC Electric Tariff, Original Volume No. 1.

NYSEG has requested waiver of the notice requirements so that the service agreements with Commonwealth, ConAgra, and WEPCo become effective as of October 29, 1997.

The Service Agreements are subject to NYSEG's Application for Approval of Corporate Reorganization which was filed with the Commission on September 1, 1997, and was assigned Docket No. EC97–52–000.

NYSEG has served copies of the filing upon the New York State Public Service Commission, Commonwealth, ConAgra, and WEPCo.

Comment date: November 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

24. Northeast Utilities Service Company

[Docket No. ER98–343–000]

Take notice that on October 28, 1997, Northeast Utilities Service Company (NUSCO), tendered for filing, a Service Agreement with PacifiCorp Power Marketing, Inc., under the NU System Companies' System Power Sales/ Exchange Tariff No. 6.

NUSCO states that a copy of this filing has been mailed to PacifiCorp Power Marketing, Inc.

NUSCO requests that the Service Agreement become effective October 24, 1997.

Comment date: November 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

25. Northeast Utilities Service Company

[Docket No. ER98–345–000]

Take notice that on October 28, 1997, Northeast Utilities Service Company (NUSCO), tendered for filing, a Service Agreement with the PacifiCorp Power Marketing, Inc., under the NU System Companies' Sale for Resale, Tariff No. 7.

NUSCO states that a copy of this filing has been mailed to PacifiCorp Power Marketing, Inc.

NUSCO requests that the Service Agreement become effective October 24, 1997.

Comment date: November 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

26. Florida Power Corporation

[Docket No. ER98–347–000]

Take notice that on October 28, 1997, Florida Power Corporation submitted a report of short-term transactions that occurred under its Market-based Rate Wholesale Power Sales Tariff (FERC Electric Tariff, Original Volume No. 8) during the period July 1, 1997 through September 30, 1997.

Comment date: November 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

27. Wolverine Power Supply Cooperative, Inc.

[Docket No. ER98–411–000]

Take notice that Wolverine Power Supply Cooperative, Inc. (Wolverine), on October 30, 1997, tendered for filing an application for authority to sell power at market-based rates. Wolverine, which will cease to be a borrower from the Rural Utilities Service and become a public utility under the Federal Power Act as of January 1, 1998, also asks for approval of certain existing interconnection agreements that allow for sales of power and energy at negotiated prices.

Copies of the filing were served upon the public utility's jurisdictional customers and the Public Utility Commission of Michigan.

Comment date: November 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

28. Rochester Gas and Electric Corporation

[Docket No. ER98–326–000]

Take notice that on October 27, 1997, Rochester Gas and Electric Corporation (RG&E) filed a Service Agreement between RG&E and the NP Energy, Inc. (Customer). This Service Agreement specifies that the Customer has agreed to the rates, term and conditions of RG&E's FERC Electric Tariff, Original Volume 3 (Market-Based Rate Tariff) accepted by the Commission in Docket No. ER97–3553–000.

RG&E requests waiver of the Commission's sixty (60) day notice requirements and an effective date of October 21, 1997 for the NP Energy, Inc. Service Agreement. RG&E has served copies of the filing on the New York State Public Service Commission and on the Customer.

Comment date: November 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

29. Rochester Gas and Electric Corporation

[Docket No. ER98–328–000]

Take notice that on October 27, 1997, Rochester Gas and Electric Corporation (RG&E), filed a Service Agreement between RG&E and the Consolidated Edison Solutions, Inc. (Customer). This Service Agreement specifies that the Customer has agreed to the rates, term and conditions of RG&E's FERC Electric Tariff, Original Volume 3 (Market-Based Rate Tariff) accepted by the Commission in Docket No. ER97–3553–000.

RG&E requests waiver of the Commission's sixty (60) day notice requirements and an effective date of October 21, 1997 for the Consolidated Edison Solutions, Inc. Service Agreement. RG&E has served copies of the filing on the New York State Public Service Commission and on the Customer.

Comment date: November 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

30. Wolverine Power Supply Cooperative, Inc.

[Docket No. ER98–413–000]

Take notice that Wolverine Power Supply Cooperative, Inc. (Wolverine), on October 30, 1997 tendered for filing (1) an initial proposed tariff to be designated Wolverine's Rates for Wolverine Power Supply Cooperative to Members consisting of Rate Schedule A and riders and (2) an Amended and Consolidated Wholesale Power Contract with each of Wolverine's six member cooperatives. The proposed tariff adopts the existing rates of Wolverine, which will cease to be a borrower from the Rural Utilities Service and become a public utility under the Federal Power Act as of January 1, 1998.

Copies of the filing were served upon the public utility's jurisdictional customers and the Public Utility Commission of Michigan.

Comment date: November 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30503 Filed 11–19–97; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG97–85–000, et al.]

Electric Rate and Corporate Regulation Filings; Entergy Power Generation Corporation, et al.

November 14, 1997.

Take notice that the following filings have been made with the Commission:

1. Entergy Power Generation Corporation

[Docket No. EG97–85–000]

On November 10, 1997, Entergy Power Generation Corporation filed with the Federal Energy Regulatory Commission a supplement to its September 26, 1997, application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations. The supplemental material included clarification sought by the Commission Staff.

Comment date: November 24, 1997, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. De Pe Energy L.L.C.

[Docket No. EG98–4–000]

On October 24, 1997, De Pere Energy L.L.C. (De Pere), filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

De Pere is developing a gas-fired eligible facility with an initial capacity of approximately 180 megawatts (net) operating as a simple-cycle combustion turbine, and later as an approximate 255 megawatt (net) combined-cycle cogeneration plant producing both electricity and steam, to be located in the City of De Pere, Brown County, Wisconsin.

Comment date: December 4, 1997, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. Enfield Energy Centre Limited

[Docket No. EG98–8–000]

Take notice that on November 10, 1997, Enfield Energy Centre Limited, a limited liability company incorporated and existing under the laws of the England and Wales, having its registered office at Cam Lea Offices, 975 Mollison Avenue, Enfield, Middlesex, EN3 7NN, England (the Applicant), filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator (EWG) status pursuant to Part 365 of the Commission's Regulations.

Applicant states that it will be engaged directly in owning an eligible facility, the Enfield Energy power plant located in the Borough of Enfield, North London, England (the Plant). The Plant will consist of a 396 MW combined cycle power plant, fueled by natural gas with gas oil as backup fuel.

Comment date: December 5, 1997, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

4. Kentucky Utilities Company

[Docket No. ER97–3378–000]

Take notice that on November 6, 1997, Kentucky Utilities Company (KU), tendered for filing an Amendment to the five (5) Supplements to FERC Rate Schedule 203, the Interconnection Agreement between KU and East Kentucky Power Cooperative.

Comment date: November 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

5. Consolidated Edison Company of New York, Inc.

[Docket No. ER97–4006–000]

Take notice that on November 3, 1997, Consolidated Edison Company of New York, Inc., tendered for filing a summary of the electric exchanges, electric capacity, and electric other energy trading activities under its FERC Electric Tariff Rate Schedule No. 2, for the quarter ending June 30, 1997.

Comment date: November 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. Denver City Energy Associates, L.P.

[Docket No. ER97–4084–001]

Take notice that on November 3, 1997, Denver City Energy Associates, L.P. (DCE), tendered for filing a Code of Conduct in compliance with the Federal Energy Regulatory Commission (the Commission) Order on Proposed Market-Based Rates of GS Electric Generating Cooperative, Inc., and DCE issued October 17, 1997 in Docket Nos. ER97–3583–000 and ER97–4084–000.

Comment date: November 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. Cargill-IEC, L.L.C.

[Docket No. ER97–4273–001]

Take notice that on October 31, 1997, Cargill-IEC, L.L.C. (Cargill-IEC), tendered for filing, pursuant to the Commission's October 17, 1997, Order Conditionally Accepting Proposed Market-Based Rates, a Compliance Filing including a revised Statement of Policy and Standards of Conduct governing the relationship between the IEC Companies and their affiliated wholesale power marketer, Cargill-IEC.

Comment date: November 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. GEN~SYS Energy

[Docket No. ER97–4335–001]

On November 3, 1997, GEN~SYS Energy made its compliance filing as required under Ordering Paragraph (A) of the Commission's Order issued in this proceeding on October 17, 1997.

Comment date: November 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. Idaho County Light & Power Cooperative Association, Inc.

[Docket No. ER97–4435–001]

Take notice that on November 4, 1997, Idaho County Light & Power Cooperative Association, Inc. (Idaho County), advised the Commission that it retired its debt from the Rural Utilities Service on October 21, 1997.

Comment date: November 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. Wisconsin Power and Light Company

[Docket No. ER97–4815–000]

Take notice that on November 3, 1997, Wisconsin Power and Light Company (WP&L), tendered for filing a request to withdraw its filing in Docket No. ER97–4815–000.

WP&L requests waiver of the Commission's notice requirements to permit the requested action. A copy of this filing has been served upon the Public Service Commission of Wisconsin.

Comment date: November 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. Detroit Edison Company

[Docket No. ER98–205–000]

Take notice that on October 15, 1997, the Detroit Edison Company (Detroit Edison) filed a revised Service Agreement in the above-referenced docket. Detroit Edison requests that the revised Service Agreement be made effective as of November 1, 1997.

Comment date: November 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. PP&L, Inc.

[Docket No. ER98–292–000]

Take notice that on October 27, 1997, PP&L, Inc., (formerly known as Pennsylvania Power & Light Company) (PP&L), filed a Service Agreement dated October 3, 1997, with Northern Indiana Public Service Co. (NIPSC) under PP&L's FERC Electric Tariff, Original Volume No. 5. The Service Agreement adds NIPSC as an eligible customer under the tariff.

PP&L requests an effective date of October 27, 1997, for the Service Agreement.

PP&L states that copies of this filing have been supplied to NIPSC and to the Pennsylvania Public Utility Commission.

Comment date: November 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. PECO Energy Company

[Docket No. ER98–293–000]

Take notice that on October 27, 1997, PECO Energy Company (PECO) filed an executed Installed Capacity Obligation Allocation Agreement between PECO and Woodruff Oil Company d/b/a Woodruff Energy (hereinafter Supplier). The terms and conditions contained within this Agreement are identical to the terms and conditions contained with the Form of Installed Capacity Allocation Agreement filed by PECO with the Commission on October 3, 1997, at Docket No. ER98–28–000. This filing merely submits an individual executed copy of the Installed Capacity Obligation Allocation Agreement between PECO and an alternate supplier participating in PECO's Pilot.

Copies of the filing were served on the Supplier and the Pennsylvania Public Utility Commission.

Comment date: November 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. PECO Energy Company

[Docket No. ER98–294–000]

Take notice that on October 27, 1997, PECO Energy Company (PECO) filed an executed Transmission Agency Agreement between PECO and Woodruff Oil Company d/b/a Woodruff Energy (hereinafter Supplier). The terms and conditions contained within this Agreement are identical to the terms and conditions contained with the Form of Transmission Agency Agreement submitted to the Commission on October 3, 1997, as part of the joint filing by the Pennsylvania Public Utility Commission and the Pennsylvania PJM Utilities at Docket No. ER98–64–000. This filing merely submits an individual executed copy of the Transmission Agency Agreement between PECO and an alternative supplier participating in PECO's Retail Access Pilot Program.

Copies of the filing were served on the Supplier and the Pennsylvania Public Utility Commission.

Comment date: November 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

15. PECO Energy Company

[Docket No. ER98–295–000]

Take notice that on October 27, 1997, PECO Energy Company (PECO) filed an executed Transmission Agency Agreement between PECO and QST Energy Inc., (hereinafter Supplier). The terms and conditions contained within

this Agreement are identical to the terms and conditions contained with the Form of Transmission Agency Agreement submitted to the Commission on October 3, 1997, as part of the joint filing by the Pennsylvania Public Utility Commission and the Pennsylvania PJM Utilities at Docket No. ER98–64–000. This filing merely submits an individual executed copy of the Transmission Agency Agreement between PECO and an alternative supplier participating in PECO's Retail Access Pilot Program.

Copies of the filing were served on the Supplier and the Pennsylvania Public Utility Commission.

Comment date: November 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

16. PECO Energy Company

[Docket No. ER98–296–000]

Take notice that on October 27, 1997, PECO Energy Company (PECO), filed an executed Transmission Agency Agreement between PECO and UGI Power Supply Inc., (hereinafter Supplier). The terms and conditions contained within this Agreement are identical to the terms and conditions contained with the Form of Transmission Agency Agreement submitted to the Commission on October 3, 1997, as part of the joint filing by the Pennsylvania Public Utility Commission and the Pennsylvania PJM Utilities at Docket No. ER98–64–000. This filing merely submits an individual executed copy of the Transmission Agency Agreement between PECO and an alternative supplier participating in PECO's Retail Access Pilot Program.

Copies of the filing were served on the Supplier and the Pennsylvania Public Utility Commission.

Comment date: November 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

17. PECO Energy Company

[Docket No. ER98–297–000]

Take notice that on October 27, 1997, PECO Energy Company (PECO) filed an executed Transmission Agency Agreement between PECO and Duke Trading and Marketing L.L.C., (hereinafter Supplier). The terms and conditions contained within this Agreement are identical to the terms and conditions contained with the Form of Transmission Agency Agreement submitted to the Commission on October 3, 1997, as part of the joint filing by the Pennsylvania Public Utility Commission and the Pennsylvania PJM Utilities at Docket No. ER98–64–000. This filing merely submits an individual executed copy of the Transmission Agency Agreement between PECO and an alternative supplier participating in PECO's Retail Access Pilot Program.

Copies of the filing were served on the Supplier and the Pennsylvania Public Utility Commission.

Comment date: November 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

18. PECO Energy Company

[Docket No. ER98–298–000]

Take notice that on October 27, 1997, PECO Energy Company (PECO) filed an executed Installed Capacity Obligation Allocation Agreement between PECO and NorAm Energy Management Inc., (hereinafter Supplier). The terms and conditions contained within this Agreement are identical to the terms and conditions contained with the ''Form of Installed Capacity Allocation Agreement'' filed by PECO with the Commission on October 3, 1997, at Docket No. ER98–28–000. This filing merely submits an individual executed copy of the Installed Capacity Obligation Allocation Agreement between PECO and an alternate supplier participating in PECO's Pilot.

Copies of the filing were served on the Supplier and the Pennsylvania Public Utility Commission.

Comment date: November 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

19. PECO Energy Company

[Docket No. ER98–299–000]

Take notice that on October 27, 1997, PECO Energy Company (PECO) filed an executed Installed Capacity Obligation Allocation Agreement between PECO and QST Energy Inc., (hereinafter Supplier). The terms and conditions contained within this Agreement are identical to the terms and conditions contained with the Form of Installed Capacity Allocation Agreement filed by PECO with the Commission on October 3, 1997, at Docket No. ER98–28–000. This filing merely submits an individual executed copy of the Installed Capacity Obligation Allocation Agreement between PECO and an alternate supplier participating in PECO's Pilot.

Copies of the filing were served on the Supplier and the Pennsylvania Public Utility Commission.

Comment date: November 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

20. PECO Energy Company

[Docket No. ER98–300–000]

Take notice that on October 27, 1997, PECO Energy Company (PECO) filed an executed Installed Capacity Obligation Allocation Agreement between PECO and West Penn Power Company dba Allegheny Power (hereinafter Supplier). The terms and conditions contained within this Agreement are identical to the terms and conditions contained with the Form of Installed Capacity Allocation Agreement filed by PECO with the Commission on October 3, 1997, at Docket No. ER98–28–000. This filing merely submits an individual executed copy of the Installed Capacity Obligation Allocation Agreement between PECO and an alternate supplier participating in PECO's Pilot.

Copies of the filing were served on the Supplier and the Pennsylvania Public Utility Commission.

Comment date: November 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

21. PECO Energy Company

[Docket No. ER98–301–000]

Take notice that on October 27, 1997, PECO Energy Company (PECO) filed an executed Transmission Agency Agreement between PECO and Pennsylvania Power & Light Co., (hereinafter Supplier). The terms and conditions contained within this Agreement are identical to the terms and conditions contained with the Form of Transmission Agency Agreement submitted to the Commission on October 3, 1997, as part of the joint filing by the Pennsylvania Public Utility Commission and the Pennsylvania PJM Utilities at Docket No. ER98–64–000. This filing merely submits an individual executed copy of the Transmission Agency Agreement between PECO and an alternative supplier participating in PECO's Retail Access Pilot Program.

Copies of the filing were served on the Supplier and the Pennsylvania Public Utility Commission.

Comment date: November 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

22. PECO Energy Company

[Docket No. ER98–302–000]

Take notice that on October 27, 1997, PECO Energy Company (PECO) filed an executed Transmission Agency Agreement between PECO and Energis Resources Inc.,(hereinafter Supplier). The terms and conditions contained within this Agreement are identical to the terms and conditions contained with the Form of Transmission Agency agreement submitted to the Commission on October 3, 1997, as part of the joint filing by the Pennsylvania Public Utility Commission and the Pennsylvania PJM Utilities at Docket No. ER98–64–000.

This filing merely submits an individual executed copy of the Transmission Agency Agreement between PECO and an alternative supplier participating in PECO's Retail Access Pilot Program.

Copies of the filing were served on the Supplier and the Pennsylvania Public Utility Commission.

Comment date: November 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

23. Jersey Central Power & Light Company, Metropolitan Edison Company, and Pennsylvania Electric Company

[Docket No. ER98–344–000]

Take notice that on October 28, 1997, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (d/b/a GPU Energy), filed an executed Service Agreement between GPU Energy and Energis Resources Incorporated (ENR), dated October 22, 1997. This Service Agreement specifies that ENR has agreed to the rates, terms and conditions of GPU Energy's Operating Capacity and/or Energy Sales Tariff (Sales Tariff) designated as FERC Electric Tariff, Original Volume No. 1. The Sales Tariff was accepted by the Commission by letter order issued on February 10, 1995 in Jersey Central Power & Light Co., Metropolitan Edison Co., and Pennsylvania Electric Co., Docket No. ER95–276–000 and allows GPU Energy and ENR to enter into separately scheduled transactions under which GPU Energy will make available for sale, surplus operating capacity and/or energy at negotiated rates that are no higher than GPU Energy's cost of service.

GPU Energy requests a waiver of the Commission's notice requirements for good cause shown and an effective date of October 22, 1997, for the Service Agreement.

GPU Energy has served copies of the filing on regulatory agencies in New Jersey and Pennsylvania.

Comment date: December 1, 1997, in accordance with Standard Paragraph E at the end of this notice.

24. IES Utilities Inc.

[Docket No. ER98–346–000]

Take notice that on October 28, 1997, IES Utilities Inc. (IES), tendered for filing Form of Service Agreement for Firm Point-to-Point Transmission Service establishing Williams Energy Services Company as a point-to-point transmission customer under the terms of IES's transmission tariff.

IES requests an effective date of October 14, 1997, and accordingly, seeks waiver of the Commission's notice requirements. A copy of this filing has been served upon the Iowa Utilities Board.

Comment date: December 1, 1997, in accordance with Standard Paragraph E at the end of this notice.

25. PECO Energy Company

[Docket No. ER98–348–000]

Take notice that on October 28, 1997, PECO Energy Company (PECO) filed a summary of transactions made during the third quarter of calendar year 1997 under PECO's Electric Tariff Original Volume No. 1, accepted by the Commission in Docket No. ER95–770, as subsequently amended and accepted by the Commission in Docket No. ER97–316.

Comment date: December 1, 1997, in accordance with Standard Paragraph E at the end of this notice.

26. Central Power and Light Company, Public Service Company of Oklahoma, Southwestern Electric Power Company, and West Texas Utilities Company

[Docket No. ER98–349–000]

Take notice that on October 28, 1997, Central Power and Light Company (CPL), Public Service Company of Oklahoma (PSO), Southwestern Electric Power Company (SWEPCO), and West Texas Utilities Company (WTU) (collectively, the Companies) tendered for filing eight Service Agreements establishing Amoco Trading Corporation and Avista Energy, Inc., as new customers under the terms of each Company's CSRT–1 Tariff. The Companies also tendered for filing executed Service Agreements with Electric Clearinghouse, Inc., and Entergy Power Marketing Corp., to be substituted for the unexecuted agreements filed earlier.

The Companies request an effective date of October 1, 1997, for each of the new service agreements and accordingly, seeks waiver of the Commission's notice requirements. Copies of this filing were served on the four customers, the Arkansas Public Service Commission, the Louisiana Public Service Commission, the Oklahoma Corporation Commission and the Public Utility Commission of Texas.

Comment date: December 1, 1997, in accordance with Standard Paragraph E at the end of this notice.

27. Interstate Power Company

[Docket No. ER98–350–000]

Take notice that on October 28, 1997, Interstate Power Company (IPW) tendered for filing two Transmission Service Agreements between IPW and Dairyland Power Cooperative (Dairyland). Under the Transmission Service Agreement, IPW will provide point-to-point transmission service to Dairyland.

Comment date: December 1, 1997, in accordance with Standard Paragraph E at the end of this notice.

28. Louisville Gas and Electric Company

[Docket No. ER98–351–000]

Take notice that on October 28, 1997, Louisville Gas and Electric Company (LG&E) tendered for filing an unexecuted Firm Point-To-Point Transmission Service Agreement between Louisville Gas and Electric Company (LG&E) and itself under LG&E's Open Access Transmission Tariff.

Comment date: December 1, 1997, in accordance with Standard Paragraph E at the end of this notice.

29. Orange and Rockland Utilities, Inc.

[Docket No. ER98–352–000]

Take notice that on October 28, 1997, Orange and Rockland Utilities, Inc. (O&R) tendered for filing its Summary Report of O&R transactions during the calendar quarter ending September 30, 1997, pursuant to the market based rate power service tariff, made effective by the Commission on March 27, 1997 in Docket No. ER97–1400–000.

Comment date: December 1, 1997, in accordance with Standard Paragraph E at the end of this notice.

30. Orange and Rockland Utilities, Inc.

[Docket No. ER98–353–000]

Take notice that on October 28, 1997, Orange and Rockland Utilities, Inc., acting on behalf of itself and its wholly owned subsidiaries, Rockland Electric Company and Pike County Light & Power Company, filed a revised Open Access Transmission Service Tariff which incorporates changes to its Energy Imbalance Service.

Comment date: December 1, 1997, in accordance with Standard Paragraph E at the end of this notice.

31. Public Service Electric and Gas Company

[Docket No. ER98–354–000]

Take notice that on October 29, 1997, Public Service Electric and Gas Company (PSE&G), of Newark, New Jersey, tendered for filing an agreement for the sale of capacity and energy to Aquila Power Corporation (Aquila) pursuant to the PSE&G Wholesale Power Market Based Sales Tariff, presently on file with the Commission.

PSE&G further requests waiver of the Commission's Regulations such that the

agreement can be made effective as of September 30, 1997.

Copies of the filing have been served upon Aquila and the New Jersey Board of Public Utilities.

Comment date: December 1, 1997, in accordance with Standard Paragraph E at the end of this notice.

32. Public Service Electric and Gas Company

[Docket No. ER98–355–000]

Take notice that on October 29, 1997, Public Service Electric and Gas Company (PSE&G), of Newark, New Jersey, tendered for filing an agreement for the sale of capacity and energy to NorAm Energy Services, Inc. (NorAm), pursuant to the PSE&G Wholesale Power Market Based Sales Tariff, presently on file with the Commission.

PSE&G further requests waiver of the Commission's Regulations such that the agreement can be made effective as of September 30, 1997.

Copies of the filing have been served upon NorAm and the New Jersey Board of Public Utilities.

Comment date: December 1, 1997, in accordance with Standard Paragraph E at the end of this notice.

33. Public Service Electric and Gas Company

[Docket No. ER98–356–000]

Take notice that on October 29, 1997, Public Service Electric and Gas Company (PSE&G), of Newark, New Jersey, tendered for filing an agreement for the sale of capacity and energy to Eastern Power Distribution, Inc. (Eastern), pursuant to the PSE&G Wholesale Power Market Based Sales Tariff, presently on file with the Commission.

PSE&G further requests waiver of the Commission's Regulations such that the agreement can be made effective as of September 30, 1997.

Copies of the filing have been served upon Eastern and the New Jersey Board of Public Utilities.

Comment date: December 1, 1997, in accordance with Standard Paragraph E at the end of this notice.

34. Public Service Electric and Gas Company

[Docket No. ER98–357–000]

Take notice that on October 29, 1997, Public Service Electric and Gas Company (PSE&G), of Newark, New Jersey, tendered for filing an agreement for the sale of capacity and energy to New York Power Authority (NYPA) pursuant to the PSE&G Wholesale Power Market Based Sales Tariff, presently on file with the Commission.

PSE&G further requests waiver of the Commission's Regulations such that the agreement can be made effective as of September 30, 1997.

Copies of the filing have been served upon NYPA and the New Jersey Board of Public Utilities.

Comment date: December 1, 1997, in accordance with Standard Paragraph E at the end of this notice.

35. Public Service Electric and Gas Company

[Docket No. ER98–358–000]

Take notice that on October 29, 1997, Public Service Electric and Gas Company (PSE&G), of Newark, New Jersey, tendered for filing an agreement for the sale of capacity and energy to DuPont Power Marketing Inc. (DuPont), pursuant to the PSE&G Wholesale Power Market Based Sales Tariff, presently on file with the Commission.

PSE&G further requests waiver of the Commission's Regulations such that the agreement can be made effective as of September 30, 1997.

Copies of the filing have been served upon DuPont and the New Jersey Board of Public Utilities.

Comment date: December 1, 1997, in accordance with Standard Paragraph E at the end of this notice.

36. Jersey Central Power & Light Company, Edison Company, and Pennsylvania Electric Company

[Docket No. ER98–359–000]

Take notice that on October 29, 1997, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (d/b/a GPU Energy), filed an executed Service Agreement between GPU Energy and Strategic Energy Ltd. (SEL), dated October 28, 1997. This Service Agreement specifies that SEL has agreed to the rates, terms and conditions of GPU Energy's Operating Capacity and/or Energy Sales Tariff (Sales Tariff) designated as FERC Electric Tariff, Original Volume No. 1. The Sales Tariff was accepted by the Commission by letter order issued on February 10, 1995 in Jersey Central Power & Light Co., Metropolitan Edison Co. and Pennsylvania Electric Co., Docket No. ER95–276–000 and allows GPU Energy and SEL to enter into separately scheduled transactions under which GPU Energy will make available for sale, surplus operating capacity and/or energy at negotiated rates that are no higher than GPU Energy's cost of service.

GPU Energy requests a waiver of the Commission's notice requirements for good cause shown and an effective date of October 28, 1997, for the Service Agreement.

GPU Energy has served copies of the filing on regulatory agencies in New Jersey and Pennsylvania.

Comment date: December 1, 1997, in accordance with Standard Paragraph E at the end of this notice.

37. Duquesne Light Company

[Docket No. ER98–360–000]

Take notice that on October 29, 1997, Duquesne Light Company (DLC) filed a Service Agreement dated October 23, 1997, with Delmarva Power & Light Co., under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement adds Delmarva Power & Light Co., as a customer under the Tariff. DLC requests an effective date of October 23, 1997, for the Service Agreement.

Comment date: December 1, 1997, in accordance with Standard Paragraph E at the end of this notice.

38. Duke Power, a division of Duke Energy Corporation

[Docket No. ER98–361–000]

Take notice that on October 29, 1997, Duke Power (Duke), a division of Duke Energy Corporation, tendered for filing Schedule MR quarterly transaction summaries for service under Duke's FERC Electric Tariff, Original Volume No. 3, for the quarter ended September 30, 1997.

Comment date: December 1, 1997, in accordance with Standard Paragraph E at the end of this notice.

39. Southern California Edison Company

[Docket No. ER98–362–000]

Take notice that on October 29, 1997, Southern California Edison Company (Edison), tendered for filing executed umbrella Service Agreements (Service Agreements) with Morgan Stanley Capital Group Inc., and NP Energy Inc., for Point-To-Point Transmission Service under Edison's Open Access Transmission Tariff (Tariff).

Edison filed the executed Service Agreements with the Commission in compliance with applicable Commission regulations. Edison also submitted revised Sheet Nos. 165 and 166 (Attachment E) to the Tariff, which is an updated list of all current subscribers. Edison requests waiver of the Commission's notice requirement to permit an effective date of October 30, 1997, for Attachment E, and to allow the Service Agreements to become effective according to their terms.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: December 1, 1997, in accordance with Standard Paragraph E at the end of this notice.

40. Louisville Gas and Electric Company

[Docket No. ER98–363–000]

Take notice that on October 29, 1997, Louisville Gas and Electric Company (LG&E), tendered for filing of its obligation to file the rates and agreements for wholesale transactions made pursuant to its market-based Generation Sales Service (GSS) Tariff.

Comment date: December 1, 1997, in accordance with Standard Paragraph E at the end of this notice.

41. Louisville Gas and Electric Company

[Docket No. ER98–364–000]

Take notice that on October 29, 1997, Louisville Gas and Electric Company (LG&E), tendered for filing an executed Non-Firm Point-To-Point Transmission Service Agreement between LG&E and PP&L, Inc., under LG&E's Open Access Transmission Tariff.

Comment date: December 1, 1997, in accordance with Standard Paragraph E at the end of this notice.

42. New England Power Company

[Docket No. ER98–365–000]

Take notice that on October 29, 1997, New England Power Company filed a Service Agreements and Certificates of Concurrence with PacifiCorp Power Marketing, Inc., under NEP's FERC Electric Tariff, Original Volumes No. 5 and 6.

Comment date: December 1, 1997, in accordance with Standard Paragraph E at the end of this notice.

43. Wolverine Power Supply Cooperative, Inc.

[Docket No. ER98–493–000]

Take notice that Wolverine Power Supply Cooperative, Inc. (Wolverine), on October 30, 1997, tendered for filing the Municipal/Cooperative Coordinated Pool (MMCP) Agreement between the Michigan Public Power Agency and Wolverine Power Supply Cooperative, Inc., dated December 20, 1991. Wolverine will cease to be a borrower from the Rural Utilities Service and become a public utility under the Federal Power Act as of December 31, 1997.

Copies of this filing were served upon the Michigan Public Power Agency and the Public Utility Commission of Michigan.

Comment date: November 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

44. Wolverine Power Supply Cooperative, Inc.

[Docket No. ER98–494–000]

Take notice that Wolverine Power Supply Cooperative, Inc., (Wolverine), On October 30, 1997, tendered for filing the two existing agreements: (1) Lansing Board of Water and Light and (2) Traverse City Light and Power Board Maintenance and Operating Agreement, dated February 28, 1979. Wolverine does not propose any changes to these contracts. Wolverine will cease to be a borrower from the Rural Utilities Service and become a public utility under the Federal Power Act as of January 1, 1998.

Copies of this filing were served upon the Lansing board of Water and Light, the Traverse City Light and Power Board, and the Public Utility commission of Michigan.

Comment date: November 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

45. GPU Advanced Resources, Inc.

[Docket No. ER98–500–000]

Take notice that GPU Advanced Resources, Inc., on October 30, 1997, tendered for filing proposed changes in its Rate Schedule FERC No. 1.

The proposed changes would allow GPU Advanced Resources, Inc., to sell electric energy at wholesale to certain affiliated public utilities for the limited purpose of reconciling energy deliveries to such public utilities with energy usage by certain retail customers of GPU Advanced Resources, Inc.

Copies of the filing were served upon the affiliated public utilities to which such wholesale sales will be made and upon the Pennsylvania Public Utilities Commission.

Comment date: November 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30504 Filed 11–19–97; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–303–000, et al.]

Electric Rate and Corporate Regulation Filings; PECO Energy Company, et al.

November 12, 1997.

Take notice that the following filings have been made with the Commission:

1. PECO Energy Company

[Docket No. ER98–303–000]

Take notice that on October 27, 1997, PECO Energy Company (''PECO'') filed an executed Installed Capacity Obligation Allocation Agreement between PECO and UGI Power Supply Inc. (hereinafter ''Supplier''). The terms and conditions contained within this Agreement are identical to the terms and conditions contained with the ''Form of Installed Capacity Allocation Agreement'' filed by PECO with the Commission on October 3, 1997 in Docket No. ER98–28–000. This filing merely submits an individual executed copy of the Installed Capacity Obligation Allocation Agreement between PECO and an alternate supplier participating in PECO's Pilot.

Copies of the filing were served on the Supplier and the Pennsylvania Public Utility Commission.

Comment date: November 25, 1997, in accordance with Standard Paragraph E at the end of this notice.

2. PECO Energy Company

[Docket No. ER98–304–000]

Take notice that on October 27, 1997, PECO Energy Company (''PECO'') filed an executed Installed Capacity Obligation Allocation Agreement between PECO and Duke Trading and Marketing L.L.C. (hereinafter ''Supplier''). The terms and conditions contained within this Agreement are identical to the terms and conditions contained with the ''Form of Installed Capacity Allocation Agreement'' filed by PECO with the Commission on October 3, 1997 in Docket No. ER98–28–000. This filing merely submits an individual executed copy of the Installed Capacity Obligation Allocation Agreement between PECO and an alternate supplier participating in PECO's Pilot.

Copies of the filing were served on the Supplier and the Pennsylvania Public Utility Commission.

Comment date: November 25, 1997, in accordance with Standard Paragraph E at the end of this notice.

3. PECO Energy Company

[Docket No. ER98–305–000]

Take notice that on October 27, 1997, PECO Energy Company (''PECO'') filed an executed Installed Capacity Obligation Allocation Agreement between PECO and DuPont Power Marketing Inc. (hereinafter ''Supplier''). The terms and conditions contained within this Agreement are identical to the terms and conditions contained with the ''Form of Installed Capacity Allocation Agreement'' filed by PECO with the Commission on October 3, 1997 in Docket No. ER98–28–000. This filing merely submits an individual executed copy of the Installed Capacity Obligation Allocation Agreement between PECO and an alternate supplier participating in PECO's Pilot.

Copies of the filing were served on the Supplier and the Pennsylvania Public Utility Commission.

Comment date: November 25, 1997, in accordance with Standard Paragraph E at the end of this notice.

4. PECO Energy Company

[Docket No. ER98–306–000]

Take notice that on October 27, 1997, PECO Energy Company (''PECO'') filed an executed Installed Capacity Obligation Allocation Agreement between PECO and Bruin Energy Inc./ Mack Services Group (hereinafter ''Supplier''). The terms and conditions contained within this Agreement are identical to the terms and conditions contained with the ''Form of Installed Capacity Allocation Agreement'' filed by PECO with the Commission on October 3, 1997 in Docket No. ER98–28–000. This filing merely submits an individual executed copy of the Installed Capacity Obligation Allocation Agreement between PECO and an alternate supplier participating in PECO's Pilot.

Copies of the filing were served on the Supplier and the Pennsylvania Public Utility Commission.

Comment date: November 25, 1997, in accordance with Standard Paragraph E at the end of this notice.

5. PECO Energy Company

[Docket No. ER98–307–000]

Take notice that on October 27, 1997, PECO Energy Company (''PECO'') filed an executed Transmission Agency Agreement between PECO and DuPont Power Marketing Inc. (hereinafter ''Supplier''). The terms and conditions contained within this Agreement are identical to the terms and conditions contained with the ''Form of Transmission Agency Agreement'' submitted to the Commission on October 3, 1997, as part of the joint filing by the Pennsylvania Public Utility Commission and the Pennsylvania PJM Utilities in Docket No. ER98–64–000. This filing merely submits an individual executed copy of the Transmission Agency Agreement between PECO and an alternative supplier participating in PECO's Retail Access Pilot Program.

Copies of the filing were served on the Supplier and the Pennsylvania Public Utility Commission.

Comment date: November 25, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. PECO Energy Company

[Docket No. ER98–308–000]

Take notice that on October 27, 1997, PECO Energy Company (''PECO'') filed an executed Transmission Agency Agreement between PECO and West Penn Power Company dba Allegheny Power (hereinafter ''Supplier''). The terms and conditions contained within this Agreement are identical to the terms and conditions contained with the ''Form of Transmission Agency Agreement'' submitted to the Commission on October 3, 1997, as part of the joint filing by the Pennsylvania Public Utility Commission and the Pennsylvania PJM Utilities in Docket No. ER98–64–000. This filing merely submits an individual executed copy of the Transmission Agency Agreement between PECO and an alternative supplier participating in PECO's Retail Access Pilot Program.

Copies of the filing were served on the Supplier and the Pennsylvania Public Utility Commission.

Comment date: November 25, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. PECO Energy Company

[Docket No. ER98–309–000]

Take notice that on October 27, 1997, PECO Energy Company (''PECO'') filed an executed Installed Capacity Obligation Allocation Agreement between PECO and Southern Energy Retail Trading & Marketing Inc., Southern Company Energy Marketing (hereinafter ''Supplier''). The terms and conditions contained within this Agreement are identical to the terms and conditions contained within the ''Form of Installed Capacity Allocation Agreement'' filed by PECO with the Commission on October 3, 1997, in Docket No. ER98–28–000. This filing merely submits an individual executed copy of the Installed Capacity Obligation Allocation Agreement between PECO and an alternate supplier participating in PECO's Pilot.

Copies of the filing were served on the Supplier and the Pennsylvania Public Utility Commission.

Comment date: November 25, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. PECO Energy Company

[Docket No. ER98–310–000]

Take notice that on October 27, 1997, PECO Energy Company (''PECO'') filed an executed Installed Capacity Obligation Allocation Agreement between PECO and New Energy Ventures—Mid Atlantic (hereinafter ''Supplier''). The terms and conditions contained within this Agreement are identical to the terms and conditions contained within the ''Form of Installed Capacity Allocation Agreement'' filed by PECO with the Commission on October 3, 1997, in Docket No. ER98–28–000. This filing merely submits an individual executed copy of the Installed Capacity Obligation Allocation Agreement between PECO and an alternate supplier participating in PECO's Pilot.

Copies of the filing were served on the Supplier and the Pennsylvania Public Utility Commission.

Comment date: November 25, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. PECO Energy Company

[Docket No. ER98–311–000]

Take notice that on October 27, 1997, PECO Energy Company (''PECO'') filed an executed Transmission Agency Agreement between PECO and Horizon Energy Company (hereinafter ''Supplier''). The terms and conditions contained within this Agreement are identical to the terms and conditions contained within the ''Form of Transmission Agency Agreement'' submitted to the Commission on October 3, 1997, as part of the joint filing by the Pennsylvania Public Utility Commission and the Pennsylvania PJM Utilities in Docket No. ER98–64–000. This filing merely submits an individual executed copy of the Transmission Agency Agreement between PECO and an alternative supplier participating in PECO's Retail Access Pilot Program.

Copies of the filing were served on the Supplier and the Pennsylvania Public Utility Commission.

Comment date: November 25, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. PECO Energy Company

[Docket No. ER98–312–000]

Take notice that on October 27, 1997, PECO Energy Company (''PECO'') filed an executed Transmission Agency Agreement between PECO and New Energy Ventures—Mid Atlantic (hereinafter ''Supplier''). The terms and conditions contained within this Agreement are identical to the terms and conditions contained within the ''Form of Transmission Agency Agreement'' submitted to the Commission on October 3, 1997, as part of the joint filing by the Pennsylvania Public Utility Commission and the Pennsylvania PJM Utilities in Docket No. ER98–64–000. This filing merely submits an individual executed copy of the Transmission Agency Agreement between PECO and an alternative supplier participating in PECO's Retail Access Pilot Program.

Copies of the filing were served on the Supplier and the Pennsylvania Public Utility Commission.

Comment date: November 25, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. PECO Energy Company

[Docket No. ER98–313–000]

Take notice that on October 27, 1997, PECO Energy Company (''PECO'') filed an executed Installed Capacity Obligation Allocation Agreement between PECO and Energis Resources Inc. (hereinafter ''Supplier''). The terms and conditions contained within this Agreement are identical to the terms and conditions contained within the ''Form of Installed Capacity Allocation Agreement'' filed by PECO with the Commission on October 3, 1997, in Docket No. ER98–28–000. This filing merely submits an individual executed copy of the Installed Capacity Obligation Allocation Agreement between PECO and an alternate supplier participating in PECO's Pilot.

Copies of the filing were served on the Supplier and the Pennsylvania Public Utility Commission.

Comment date: November 25, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. PECO Energy Company

[Docket No. ER98–314–000]

Take notice that on October 27, 1997, PECO Energy Company (''PECO'') filed an executed Transmission Agency Agreement between PECO and GPU Advanced Resources Inc. (hereinafter ''Supplier''). The terms and conditions contained within this Agreement are identical to the terms and conditions contained within the ''Form of Transmission Agency Agreement'' submitted to the Commission on October 3, 1997, as part of the joint filing by the Pennsylvania Public Utility Commission and the Pennsylvania PJM Utilities in Docket No. ER98–64–000. This filing merely submits an individual executed copy of the Transmission Agency Agreement between PECO and an alternative supplier participating in PECO's Retail Access Pilot Program.

Copies of the filing were served on the Supplier and the Pennsylvania Public Utility Commission.

Comment date: November 25, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. PECO Energy Company

[Docket No. ER98–315–000]

Take notice that on October 27, 1997, PECO Energy Company (''PECO'') filed an executed Transmission Agency Agreement between PECO and Cinergy Resources Inc. (hereinafter ''Supplier''). The terms and conditions contained within this Agreement are identical to the terms and conditions contained with the ''Form of Transmission Agency Agreement'' submitted to the Commission on October 3, 1997, as part of the joint filing by the Pennsylvania Public Utility Commission and the Pennsylvania PJM Utilities in Docket No. ER98–64–000. This filing merely submits an individual executed copy of the Transmission Agency Agreement between PECO and an alternative supplier participating in PECO's Retail Access Pilot Program.

Copies of the filing were served on the Supplier and the Pennsylvania Public Utility Commission.

Comment date: November 25, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. PECO Energy Company

[Docket No. ER98–316–000]

Take notice that on October 27, 1997, PECO Energy Company (''PECO'') filed an executed Installed Capacity Obligation Allocation Agreement between PECO and Cinergy Resources Inc. (hereinafter ''Supplier''). The terms and conditions contained within this Agreement are identical to the terms and conditions contained with the ''Form of Installed Capacity Allocation Agreement'' filed by PECO with the Commission on October 3, 1997 in Docket No. ER98–28–000. This filing merely submits an individual executed copy of the Installed Capacity Obligation Allocation Agreement between PECO and an alternate supplier participating in PECO's Pilot.

Copies of the filing were served on the Supplier and the Pennsylvania Public Utility Commission.

Comment date: November 25, 1997, in accordance with Standard Paragraph E at the end of this notice.

15. PECO Energy Company

[Docket No. ER98–317–000]

Take notice that on October 27, 1997, PECO Energy Company (''PECO'') filed an executed Transmission Agency Agreement between PECO and Southern Energy Retail Trading & Marketing Inc., Southern Company Energy Marketing. (hereinafter ''Supplier''). The terms and conditions contained within this Agreement are identical to the terms and conditions contained with the ''Form of Transmission Agency Agreement'' submitted to the Commission on October 3, 1997, as part of the joint filing by the Pennsylvania Public Utility Commission and the Pennsylvania PJM Utilities in Docket No. ER98–64–000. This filing merely submits an individual executed copy of the Transmission Agency Agreement between PECO and an alternative supplier participating in PECO's Retail Access Pilot Program.

Copies of the filing were served on the Supplier and the Pennsylvania Public Utility Commission.

Comment date: November 25, 1997, in accordance with Standard Paragraph E at the end of this notice.

16. PECO Energy Company

[Docket No. ER98–318–000]

Take notice that on October 27, 1997, PECO Energy Company (''PECO'') filed an executed Transmission Agency Agreement between PECO and NorAm Energy Management Inc. (hereinafter ''Supplier''). The terms and conditions contained within this Agreement are identical to the terms and conditions contained with the ''Form of Transmission Agency Agreement'' submitted to the Commission on October 3, 1997, as part of the joint filing by the Pennsylvania Public Utility Commission and the Pennsylvania PJM Utilities in Docket No. ER98–64–000. This filing merely submits an individual executed copy of the Transmission Agency Agreement between PECO and an alternative supplier participating in PECO's Retail Access Pilot Program.

Copies of the filing were served on the Supplier and the Pennsylvania Public Utility Commission.

Comment date: November 25, 1997, in accordance with Standard Paragraph E at the end of this notice.

17. PECO Energy Company

[Docket No. ER98–319–000]

Take notice that on October 27, 1997, PECO Energy Company (''PECO'') filed an executed Installed Capacity Obligation Allocation Agreement between PECO and Horizon Energy Company (hereinafter ''Supplier''). The terms and conditions contained within this Agreement are identical to the terms and conditions contained with the ''Form of Installed Capacity Allocation Agreement'' filed by PECO with the Commission on October 3, 1997 in Docket No. ER98–28–000. This filing merely submits an individual executed copy of the Installed Capacity Obligation Allocation Agreement between PECO and an alternate supplier participating in PECO's Pilot.

Copies of the filing were served on the Supplier and the Pennsylvania Public Utility Commission.

Comment date: November 25, 1997, in accordance with Standard Paragraph E at the end of this notice.

18. PECO Energy Company

[Docket No. ER98–320–000]

Take notice that on October 27, 1997, PECO Energy Company (''PECO'') filed an executed Installed Capacity Obligation Allocation Agreement between PECO and GPU Advanced Resources Inc. (hereinafter ''Supplier''). The terms and conditions contained within this Agreement are identical to the terms and conditions contained with the ''Form of Installed Capacity Allocation Agreement'' filed by PECO with the Commission on October 3, 1997 in Docket No. ER98–28–000. This filing merely submits an individual executed copy of the Installed Capacity Obligation Allocation Agreement between PECO and an alternate supplier participating in PECO's Pilot.

Copies of the filing were served on the Supplier and the Pennsylvania Public Utility Commission.

Comment date: November 25, 1997, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30467 Filed 11–19–97; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG98–6–000, et al.]

Electric Rate and Corporate Regulation Filings; Transcanada OSP Holdings Ltd., et al.

November 10, 1997.

Take notice that the following filings have been made with the Commission:

1. TransCanada OSP Holdings Ltd.

[Docket No. EG98–6–000]

Take notice that on November 5, 1997, TransCanada OSP Holdings Ltd. (Applicant), with its principal office at 111–5th Avenue S.W. Calgary, Alberta, Canada T2P 3Y6, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

Applicant states that it will be engaged indirectly through affiliates in owning and operating the Ocean State Power project consisting of two approximately 250 megawatt electric generating facilities located in Burrillville, Rhode Island (the Facility). Electric energy produced by the Facility is sold exclusively at wholesale.

Comment date: December 1, 1997, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. National Gas & Electric L.P., Western Power Services, Inc., Western Power Services, Inc., WPS Energy Services, Inc., Avista Energy, Inc., CHI Power Marketing, Inc., and American National Power, Inc.

[Docket Nos. ER90–168–034, ER95–748–009, ER95–748–010, ER96–1088–012, ER96–2408–006, ER96–2640–004, and ER96–1195–006, (not consolidated)]

Take notice that the following informational filings have been made with the Commission and are on file and available for public inspection and copying in the Commission's Public Reference Room:

On October 20, 1997, National Gas & Electric L.P., filed certain information as required by the Commission's March 20, 1990, order in Docket No. ER90–168–000.

On October 16, 1997, Western Power Services, Inc., filed certain information as required by the Commission's May 16, 1995, order in Docket No. ER95–748–000.

On October 17, 1997, Western Power Services, Inc., filed certain information as required by the Commission's May 16, 1995, order in Docket No. ER95–748–000.

On October 21, 1997, WPS Energy Services, Inc., filed certain information as required by the Commission's April 16, 1996, order in Docket No. ER96–1088–000.

On October 29, 1997, Avista Energy, Inc., filed certain information as required by the Commission's September 12, 1996, order in Docket No. ER96–2408–000.

On October 29, 1997, CHI Power Marketing, Inc., filed certain information as required by the Commission's September 12, 1996, order in Docket No. ER96–2640–000.

On October 29, 1997, American National Power, Inc., filed certain information as required by the Commission's May 1, 1996, order in Docket No. ER96–1195–000.

3. New England Power Company, The Narragansett Electric Company, AllEnergy Marketing Company, L.L.C., and USGen New England, Inc.

[Docket Nos. ER98–6–000 and EC98–1–000]

Take notice that on November 5, 1997, New England Power Company (NEP), The Narragansett Electric Company (Narragansett), AllEnergy Marketing Company, L.L.C. (AllEnergy) and USGen New England, Inc. (USGenNE), submitted for filing, pursuant to Sections 203 and 205 of the Federal Power Act, and Parts 33 and 35 of the Commission's Regulations, amendments to applications filed on October 1, 1997, in the above-referenced dockets in connection with the divestiture by NEP and Narragansett of substantially all of their non-nuclear generation assets to USGenNE.

Comment date: December 1, 1997, in accordance with Standard Paragraph E at the end of this notice.

4. Northern Indiana Public Service Company

[Docket No. ER98–271–000]

Take notice that on October 24, 1997, Northern Indiana Public Services

Company (Northern) filed a Service Agreement pursuant to its Power Sales Tariff with ProLiance Energy, LLC. Northern has requested that the Service Agreement be allowed to become effective as of October 31, 1997.

Copies of this filing have been sent to ProLiance Energy, LLC, to the Indiana Utility Regulatory Commission, and to the Indiana Office of Utility Consumer Counselor.

Comment date: November 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

5. Northern Indiana Public Service Company

[Docket No. ER98–272–000]

Take notice that on October 24, 1997, Northern Indiana Public Service Company tendered for filing an executed Sales Service Agreement and an executed Standard Transmission Service Agreement for Non-Firm Point-to-Point Transmission Service between Northern Indiana Public Service Company and Northeast Utilities Service Company.

Under the Transmission Service Agreement, Northern Indiana Public Service Company will provide Point-to-Point Transmission Service to Northeast Utilities Service Company pursuant to the Transmission Service Tariff filed by Northern Indiana Public Service Company in Docket No. OA96–47–000 and allowed to become effective by the Commission. Under the Sales Service Agreement, Northern Indiana Public Service Company will provide general purpose energy and negotiated capacity to QST, pursuant to the Wholesale Sales Tariff filed by Northern Indiana Public Service Company in Docket No. ER95–1222–000 as amended by the Commission's order in Docket No. ER97–458–000 and allowed to become effective by the Commission. Northern Indiana Public Service Company has requested that the Service Agreements be allowed to become effective as of October 31, 1997.

Copies of this filing have been sent to the Indiana Utility Regulatory Commission and the Indiana Office of Utility Consumer Counselor.

Comment date: November 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. Northern Indiana Public Service Company

[Docket No. ER98–273–000]

Take notice that on October 24, 1997, Northern Indiana Public Service Company tendered for filing an executed Sales Service Agreement and an executed Standard Transmission Service Agreement for Non-Firm Point-to-Point Transmission Service between Northern Indiana Public Service Company and QST Energy Trading Inc.

Under the Transmission Service Agreement, Northern Indiana Public Service Company will provide Point-to-Point Transmission Service to QST Energy Trading Inc., pursuant to the Transmission Service Tariff filed by Northern Indiana Public Service Company in Docket No. OA96–47–000 and allowed to become effective by the Commission. Under the Sales Service Agreement, Northern Indiana Public Service Company will provide general purpose energy and negotiated capacity to QST, pursuant to the Wholesale Sales Tariff filed by Northern Indiana Public Service Company in Docket No. ER95–1222–000 as amended by the Commission's order in Docket No. ER97–458–000 and allowed to become effective by the Commission. Northern Indiana Public Service Company has requested that the Service Agreements be allowed to become effective as of October 31, 1997.

Copies of this filing have been sent to the Indiana Utility Regulatory Commission and the Indiana Office of Utility Consumer Counselor.

Comment date: November 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. Consolidated Edison Solutions, Inc.

[Docket No. ER98–274–000]

On October 24, 1997, Consolidated Edison Solutions, Inc. (ConEdison Solutions), filed pursuant to Section 35.16 a Notice of Succession under which ConEdison Solutions will succeed to ProMark Energy, Inc's Rate Schedule No. 1. ConEdison Solutions requests that the succession be made effective September 24, 1997.

Comment date: November 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. MidAmerican Energy Company

[Docket No. ER98–275–000]

Take notice that on October 24, 1997, MidAmerican Energy Company tendered for filing a proposed change in its Rate Schedule for Power Sales, FERC Electric Rate Schedule, Original Volume No. 5. The proposed change consists of the following:

1. Seventh Revised Sheet No. 16, superseding Sixth Revised Sheet No. 16;
2. Fifth Revised Sheet Nos. 17 and 18, superseding Fourth Revised Sheet Nos. 17 and 18;
3. Fourth Revised Sheet Nos. 19 and 20, superseding Third Revised Sheet Nos. 19 and 20;
4. Third Revised Sheet No. 21, superseding Second Revised Sheet No. 21; and
5. Original Sheet Nos. 22 and 23.

MidAmerican states that it is submitting these tariff sheets for the purpose of complying with the requirements set forth in Southern Company Services, Inc., 75 FERC ¶ 61,130 (1996), relating to quarterly filings by public utilities of summaries of short-term market-based power transactions. The tariff sheets contain summaries of such transactions under the Rate Schedule for Power Sales for the applicable quarter.

MidAmerican proposes an effective date of the first day of the applicable quarter for the rate schedule change. Accordingly, MidAmerican requests a waiver of the 60-day notice requirement for this filing. MidAmerican states that this date is consistent with the requirements of the Southern Company Services, Inc., order and the effective date authorized in Docket No. ER96–2459–000.

Copies of the filing were served upon MidAmerican's customers under the Rate Schedule for Power Sales and the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: November 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. Idaho Power Company

[Docket No. ER98–276–000]

Take notice that on October 24, 1997, Idaho Power Company (IPC) tendered for filing with the Federal Energy Regulatory Commission a Quarterly Transaction Summary Report under Idaho Power Company's Market Rate Power Sale Tariff.

Comment date: November 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. Jersey Central Power & Light Company, Metropolitan Edison Company, and Pennsylvania Electric Company

[Docket No. ER98–278–000]

Take notice that on October 24, 1997, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (d/b/a GPU Energy), filed an executed Service Agreement between GPU Energy and Allegheny Power (ALP), dated October 23, 1997. This Service Agreement specifies that ALP has agreed to the rates, terms and conditions of GPU Energy's Operating Capacity and/or Energy Sales Tariff (Sales Tariff) designated as FERC Electric Tariff,

Original Volume No. 1. The Sales Tariff was accepted by the Commission by letter order issued on February 10, 1995, in Jersey Central Power & Light Co., Metropolitan Edison Co. and Pennsylvania Electric Co., Docket No. ER95–276–000 and allows GPU Energy and ALP to enter into separately scheduled transactions under which GPU Energy will make available for sale, surplus operating capacity and/or energy at negotiated rates that are no higher than GPU Energy's cost of service.

GPU Energy requests a waiver of the Commission's notice requirements for good cause shown and an effective date of October 23, 1997, for the Service Agreement.

GPU Energy has served copies of the filing on regulatory agencies in New Jersey and Pennsylvania.

Comment date: November 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. Jersey Central Power & Light Company, Metropolitan Edison Company, and Pennsylvania Electric Company

[Docket No. ER98–279–000]

Take notice that on October 24, 1997, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (d/b/a GPU Energy), filed an executed Service Agreement between GPU Energy and Dupont Power Marketing, Inc. (DPM), dated October 23, 1997. This Service Agreement specifies that DPM has agreed to the rates, terms and conditions of GPU Energy's Operating Capacity and/or Energy Sales Tariff (Sales Tariff) designated as FERC Electric Tariff, Original Volume No. 1. The Sales Tariff was accepted by the Commission by letter order issued on February 10, 1995, in Jersey Central Power & Light Co., Metropolitan Edison Co., and Pennsylvania Electric Co., Docket No. ER95–276–000 and allows GPU Energy and DPM to enter into separately scheduled transactions under which GPU Energy will make available for sale, surplus operating capacity and/or energy at negotiated rates that are no higher than GPU Energy's cost of service.

GPU Energy requests a waiver of the Commission's notice requirements for good cause shown and an effective date of October 23, 1997, for the Service Agreement.

GPU Energy has served copies of the filing on regulatory agencies in New Jersey and Pennsylvania.

Comment date: November 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. Kansas City Power & Light Company

[Docket No. ER98–280–000]

Take notice that on October 24, 1997, Kansas City Power & Light Company (KCPL) tendered for filing a Service Agreement dated October 1, 1997, between KCPL and Tenaska Power Services Co. KCPL proposes an effective date of October 10, 1997 and requests a waiver of the Commission's notice requirement to allow the requested effective date. This Agreement provides for the rates and charges for Short-term Firm Transmission Service.

In its filing, KCPL states that the rates included in the above-mentioned Service Agreement are KCPL's rates and charges in the compliance filing to FERC Order No. 888-A, in Docket No. OA97–636–000.

Comment date: November 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. Northeast Utilities Service Company

[Docket No. ER98–281–000]

Take notice that Northeast Utilities Service Company (NUSCO), on October 24, 1997, tendered for filing, a Service Agreement with the CNG Power Services Corporation under the NU System Companies' Sale for Resale, Tariff No. 7.

NUSCO states that a copy of this filing has been mailed to the CNG Power Services Corporation.

NUSCO requests that the Service Agreement become effective October 20, 1997.

Comment date: November 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. PacifiCorp

[Docket No. ER98–282–000]

Take notice that PacifiCorp on October 24, 1997, tendered for filing in accordance with 18 CFR Part 35 of the Commission's Rules and Regulations, Non-Firm and Short-Term Firm Point-To-Point Transmission Service Agreements with Cook Inlet Energy Supply L.P., under PacifiCorp's FERC Electric Tariff, First Revised Volume No. 11.

Copies of this filing were supplied to the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

Comment date: November 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

15. Union Electric Company

[Docket No. ER98–283–000]

Take notice that on October 27, 1997, Union Electric Company (Union) tendered for filing a Notice of Cancellation of Rate Schedule FERC No. 161, dated July 21, 1995, (Docket No. ER96–925–000).

Union states that notice of the proposed cancellation has been served upon the Electric Clearinghouse, Inc.

Comment date: November 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

16. Union Electric Company

[Docket No. ER98–284–000]

Take notice that on October 27, 1997, Union Electric Company (Union) tendered for filing a Notice of Cancellation of Rate Schedule FERC No. 162, dated June 20, 1996, (Docket No. ER96–2298–000).

Union states that notice of the proposed cancellation has been served upon the Duke/Louis Dreyfus L.L.C.

Comment date: November 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

17. Union Electric Company

[Docket No. ER98–286–000]

Take notice that on October 27, 1997, Union Electric Company tendered for filing a Notice of Cancellation of Rate Schedule FERC No. 164, dated March 26, 1996, (Docket No. ER96–1386–000).

Comment date: November 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

18. Union Electric Company

[Docket No. ER98–287–000]

Take notice that on October 27, 1997, Union Electric Company tendered for filing a Notice of Cancellation of Rate Schedule FERC No. 158, dated August 23, 1995, (Docket No. ER95–1607–000).

Comment date: November 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

19. Union Electric Company

[Docket No. ER98–288–000]

Take notice that on October 27, 1997, Union Electric Company tendered for filing a Notice of Cancellation of Rate Schedule FERC No. 159, dated September 29, 1995, (Docket No. ER95–1846–000).

Comment date: November 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

20. PP&L, Inc.

[Docket No. ER98–289–000]

Take notice that on October 27, 1997, PP&L, Inc., (formerly known as Pennsylvania Power & Light Company) (PP&L), filed a Service Agreement dated October 23, 1997, with Dupont Power Marketing, Inc., (Dupont) under PP&L's

FERC Electric Tariff, Original Volume No. 5. The Service Agreement adds Dupont as an eligible customer under the Tariff.

PP&L requests an effective date of October 27, 1997, for the Service Agreement.

PP&L states that copies of this filing have been supplied to Dupont and to the Pennsylvania Public Utility Commission.

Comment date: November 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

21. The Dayton Power and Light Company

[Docket No. ER98–290–000]

Take notice that on October 27, 1997, Dayton Power and Light Company (Dayton), submitted service agreements establishing Delmarva Power and Light Company, Entergy Power Marketing Corp., Ohio Power Valley Electric Corporation, QST Energy Trading, Inc., as customers under the terms of Dayton's Open Access Transmission Tariff.

Dayton requests an effective date of one day subsequent to this filing for the service agreements. Accordingly, Dayton requests waiver of the Commission's notice requirements. Copies of filing were served upon establishing Delmarva Power and Light Company, Entergy Power Marketing Corp., Ohio Power Valley Electric Corporation, QST Energy Trading, Inc., and the Public Utilities Commission of Ohio.

Comment date: November 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

22. PP&L, Inc.

[Docket No. ER98–291–000]

Take Notice that on October 27, 1997, PP&L, Inc., (formerly known as Pennsylvania Power & Light Company) (PP&L), filed a Service Agreement dated October 1, 1997, with Eastern Power Distribution Incorporated (EPDI), under PP&L's FERC Electric Tariff, Original Volume No. 5. The Service Agreement adds EPDI as an eligible customer under the Tariff.

PP&L requests an effective date of October 27, 1997, for the Service Agreement.

PP&L states that copies of this filing have been supplied to EPDI and to the Pennsylvania Public Utility Commission.

Comment date: November 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

23. Fall River Rural Electric Cooperative, Inc.

[Docket No. OA98–1–000]

Take notice that on October 8, 1997, Fall River Rural Electric Cooperative, Inc., tendered for filing a petition for waiver of the requirements of Order No. 888 and Order No. 889.

Comment date: November 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

24. Wolverine Power Supply Cooperative, Inc.

[Docket No. OA98–4–000]

Take notice that on October 30, 1997, Wolverine Power Supply Cooperative, Inc. (Wolverine), tendered for filing a Request for Waiver, in accordance with Section 35.28(d) of the Commission's Regulations, 18 CFR 35.28(d).

In Wolverine's Request for Waiver, Wolverine seeks a waiver of the OASIS and standards of conduct requirements of Order Nos. 889 and 889-A.

Comment date: November 25, 1997, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–30466 Filed 11–19–97; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5924–7]

Retrofit/Rebuild Requirements for 1993 and Earlier Model Year Urban Buses; Public Review of a Notification of Intent To Certify Equipment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of agency receipt of a notification of intent to certify equipment and initiation of 45-day public review and comment period.

SUMMARY: NOPEC Corporation has submitted to EPA a notification of intent to certify urban bus retrofit/rebuild equipment pursuant to 40 CFR part 85, subpart O. The notification describes equipment consisting of biodiesel fuel additive in combination with a particular exhaust system catalyst.

Pursuant to section 85.1407(a)(7), today's **Federal Register** document summarizes the notification, announces that the notification is available for public review and comment, and initiates a 45-day period during which comments can be submitted. EPA will review this notification of intent to certify, as well any comments it receives, to determine whether the equipment described in the notification of intent to certify should be certified. If certified, the equipment can be used by urban bus operators to reduce the particulate matter of urban bus engines as discussed below.

The candidate equipment is identical to equipment supplied by Twin Rivers Technologies, Limited Partnership, and which was previously certified as described in the **Federal Register** on October 22, 1996 (61 FR 54790).

The NOPEC notification of intent to certify, as well as other materials specifically relevant to it, are contained in category XVIII of Public Docket A–93–42, entitled ''Certification of Urban Bus Retrofit/Rebuild Equipment''. This docket is located at the address listed below.

Today's document initiates a 45-day period during which EPA will accept written comments, as discussed further below, relevant to whether or not the equipment described in the NOPEC notification of intent to certify should be certified. Comments should be provided in writing to Public Docket A–93–42, Category XVIII, at the address below, and an identical copy should be submitted to William Rutledge, also at the address below.

DATES: Comments must be submitted on or before January 5, 1998.

ADDRESSES: Submit identical copies of comments to each of the two following addresses:

1. U.S. Environmental Protection Agency, Public Docket A–93–42 (Category XVIII), Room M–1500, 401 M Street S.W., Washington, DC 20460.

2. William Rutledge, Engine Compliance Group, Engine Programs and Compliance Division (6403J), 401 ''M'' Street S.W., Washington, DC 20460.

The NOPEC notification of intent to certify, as well as other materials specifically relevant to it, are contained in the public docket indicated above. Docket items may be inspected from 8 a.m. until 5:30 p.m., Monday through Friday. As provided in 40 CFR part 2, a reasonable fee may be charged by EPA for copying docket materials.

FOR FURTHER INFORMATION CONTACT: William Rutledge, Engine Programs and Compliance Division (6403J), U.S. Environmental Protection Agency, 401 M Street S.W., Washington, DC 20460. Telephone: (202) 564–9297.

SUPPLEMENTARY INFORMATION:

I. Program Background

On April 21, 1993, EPA published final Retrofit/Rebuild Requirements for 1993 and Earlier Model Year Urban Buses (58 FR 21359). The retrofit/rebuild program is intended to reduce the ambient levels of particulate matter (PM) in urban areas and is limited to 1993 and earlier model year (MY) urban buses operating in metropolitan areas with 1980 populations of 750,000 or more, whose engines are rebuilt or replaced after January 1, 1995. Operators of the affected buses are required to choose between two compliance options: Option 1 establishes PM emissions requirements for each urban bus engine in an operator's fleet which is rebuilt or replaced. Option 2 is a fleet averaging program that establishes specific annual target levels for average PM emissions from urban buses in an operator's fleet.

A key aspect of the program is the certification of retrofit/rebuild equipment. To meet either of the two compliance options, operators of the affected buses must use equipment which has been certified by EPA. Emissions requirements under either of the two compliance programs depend on the availability of retrofit/rebuild equipment certified for each engine model. To be used for Option 1, equipment must be certified as meeting a 0.10 g/bhp-hr PM standard or as achieving a 25 percent reduction in PM. Equipment used for Option 2 must be certified as providing some level of PM reduction that would in turn be claimed by urban bus operators when calculating their average fleet PM levels attained under the program. For Option 1, information on life cycle costs must be submitted in the notification of intent to certify if certification of the equipment is intended to initiate (or trigger) program requirements. To trigger program requirements, the certifier must guarantee that the equipment will be available to all affected operators for a life cycle cost of $7,940 or less at the 0.10 g/bhp-hr PM level, or for a life cycle cost of $2,000 or less for the 25 percent or greater reduction in PM. Both of these values are based on 1992 dollars.

As noted above, operators of affected buses must use equipment which has been certified by EPA. An important element of the certification process is input from the public based on review of notifications of intent to certify. It is expected that engine manufacturers, bus manufacturers, transit operators, and industry associations will be able to provide valuable information related to the installation and use of particular equipment by transit operators. Such information will be useful to the Engine Programs and Compliance Division in its role of determining whether any specific equipment can be certified.

II. Notification of Intent To Certify

By a notification of intent to certify signed February 6, 1997, NOPEC Corporation, with principal place of business at 1248 George Jenkins Boulevard, Lakeland, Florida 33815, applied for certification of equipment applicable to certain urban bus engines manufactured by Detroit Diesel Corporation (DDC).

The NOPEC notification of intent to certify is unique in that the NOPEC candidate equipment conforms to the specifications of equipment previously certified by EPA for use in the Urban Bus Retrofit/Rebuild program. The specifications for the previously-certified equipment, supplied by Twin Rivers Technologies, Limited Partnership, are public information and described in a **Federal Register** document dated October 22, 1996 (61 FR 54790). The October 1996 document provides complete equipment specifications, including specifications of the biodiesel component of the certified Twin Rivers' equipment. The NOPEC notification relies on the same emissions certification data that is the basis of the Twin Rivers' certification. Both the emissions test data and biodiesel specification referenced in the NOPEC notification, are public information. As just noted, the specifications for the biodiesel was published in the October 1996 document. The testing used to demonstrate the emissions performance of the Twin Rivers' equipment was conducted under the auspices of the National Biodiesel Board, which has indicated in a letter to EPA that the data is in the public domain. Additionally, as with the Twin Rivers' equipment, the NOPEC equipment utilizes the same Engelhard exhaust catalyst and, with some configurations, fuel injection retard.

Today's document will begin a 45-day period during which the public can review and comment on the candidate equipment and other aspects of the NOPEC notification. The following is a brief description of the candidate equipment.

III. Description of Previously-Certified Equipment and Identical Candidate Equipment

The equipment is applicable to petroleum-fueled Detroit Diesel Corporation (DDC) two-stroke/cycle engines originally equipped in urban buses from model year 1979 to model year 1993, excluding the 1990 model year DDC model 6L71TA engines. The two configurations of the equipment, described more fully below, are: (1) a biodiesel fuel additive used in conjunction with an exhaust system catalytic converter muffler; and, (2) the biodiesel additive and catalytic converter used in conjunction with a fuel injection timing retard.

The certification announced in the **Federal Register** document of October 22, 1996, applies to equipment configurations of B20, catalyst, and timing retard that comply with specifications described below. NOPEC intends to comply with identical specifications.

The key component of the equipment is a particular oxidation catalyst-muffler unit designed to replace the typical noise muffler in the exhaust system of applicable recipient engines. The particular catalyst is the CMX'' manufactured by the Engelhard Corporation and certified for use in the urban bus retrofit/rebuild program on May 31, 1995 (60 FR 28402). The NOPEC equipment must use CMX'' catalyst muffler units supplied by Engelhard and meeting the specifications covered by Engelhard's certification of May 31, 1995. EPA requires that use of catalysts of any other specification, or supplied by any other catalyst supplier, be the subject of a separate notification of intent to certify. In a letter to EPA dated February 17, 1997, Engelhard states that it will notify EPA and NOPEC if the specifications for its catalyst change. Engelhard's letter is in the public docket. The technical specifications for the CMX are confidential information available to EPA.

Another component of the equipment is use of biodiesel provided by NOPEC as an additive that complies with the specifications below. In general, biodiesel is an ester-based fuel oxygenate derived from biological

sources for use in compression-ignition (that is ''diesel'') engines. It is the alkyl ester product of the transesterification reaction of biological triglycerides, or biologically-derived oils. While many biological oil sources can produce esters through this reaction, the candidate equipment is limited to the identical specification of the certification announced in the **Federal Register** document of October 22, 1996. It will comply with the following specification.

The biodiesel component of the equipment is to be supplied by NOPEC and must be blended at a nominal 20 percent volume with federally-required low sulfur diesel fuel (with a maximum sulfur content of 0.05 weight percent). This blend is referred to as ''B20''. The B20 blend is no less than 19 percent and no more than 21 percent by volume biodiesel, with the specified diesel. The use of B20 alone (that is, without the catalyst) is not candidate for certification because emissions test data is not available which sufficiently demonstrate that it will reduce PM. The biodiesel component is limited to mono-alkyl methyl esters meeting the specifications of Table 1 below.

TABLE 1.—BIODIESEL COMPONENT SPECIFICATIONS

Feedstock: Original-use, plant oil sources only		
Composition: Methyl esters of the following carbon chain length:		
Sum of C16 + C18's	90.5 wt % min	Determined by GC.
Fraction < C16	2.0 wt % max	Determined by GC.
Fraction > C18	7.5 wt % max	Determined by GC.
Blend Ratio: minimum 19 percent and maximum 21 percent by volume biodiesel complying with the above specifications for feedstock and composition, and the balance federally required low sulfur diesel fuel complying with 40 CFR Section 80.29.		

The biodiesel component of the candidate equipment must comply with the specifications of Table 1. The biodiesel component of the NOPEC notification is limited to a nominal B20 blend, and to biodiesel meeting the specified carbon chain-lengths and consisting of esters produced from methyl alcohol and feedstocks of original-use plant oil sources. Because the certification testing was conducted solely using soy methyl ester, EPA believes that compliance with the carbon chain-length specifications and the specified blend ratio of Table 1 are appropriate to provide assurance of the emissions performance. This specification, including the feedstock and alcohol limitations, is discussed further in the following section. Consistent with the previously certified Twin Rivers' equipment, blend ratios less than 19 percent or greater than 21 percent is not part of the NOPEC notification.

The candidate equipment includes a biodiesel component having a relatively limited specification. Biodiesel not complying with the specifications of Table 1, and biodiesel provided or produced by others, must be certified to be used in compliance with the urban bus program. Certification by other parties or involving other biodiesel specifications may be appropriate upon satisfactory compliance with the requirements of the urban bus program (40 CFR part 85, subpart O).

EPA understands that industry consensus-based fuel specifications of such physical and fuel properties for biodiesel is being developed by the American Society for Testing and Materials (ASTM), in cooperation with petroleum, engine, and biodiesel industry interests. NOPEC states that it will maintain compliance with ASTM specifications as they evolve.

For certain DDC engines equipped with MUI as indicated in Table 2, the candidate equipment includes fuel injection timing retard from zero to four (4) degrees from stock timing. The emission data indicate that PM is reduced 24.5 percent when timing is retarded four (4) degrees. While these data do not show 25 percent reduction, EPA believes the data support certification of retard from zero to three (3) degrees as providing PM reduction of at least 25 percent on MUI engines. Zero to three (3) degree range of retard, then, can be used by operators electing either compliance program 1 or 2 and otherwise in compliance with program requirements. MUI engines retarded four (4) degrees do not reduce PM emissions by at least 25 percent and, therefore, can be used only by operators electing compliance Option 2. Operators electing compliance program 2 and using any retard, must use the PM certification level specified in Table 3 for the applicable engine when calculating fleet emissions averages.

Injection retard on MUI engines is accomplished by adjusting fuel injector height (for four degrees retard, 0.028 inches is added to the stock injector timing height).

As discussed in the **Federal Register** document of October 22, 1996, analysis indicates that 1990 through 1993 model year Detroit Diesel Corporation 6V92TA DDEC engines (when using B20 with catalyst) will exceed applicable federal standards for NO_x unless timing retard is used. Therefore, the only configuration for these engines requires retarding the injection timing one (1) degree. The NOPEC notification states that one (1) degree retard on these DDEC engines is accomplished by relocating the reference timing sensor.

IV. Emissions Test Data and Certification Levels

Reductions in PM emissions are demonstrated using engine dynamometer (transient) testing in accordance with the Federal Test Procedure for heavy-duty diesel engines. The engine dynamometer data, the same used previously by Twin Rivers, are shown below in Table 2, and are the bases for the PM reduction attributed to the candidate NOPEC equipment when used on applicable engines. The emissions test data are part of NOPEC's notification of intent to certify. A letter from the National Biodiesel Board (NBB) states that the emissions data are in the public domain. All testing was conducted using soy methyl ester (SME) additive blended with #2 low-sulfur diesel fuel. Hereinafter, the term *B20* is used to mean biodiesel blended at the ratio of 20 percent by volume with federally required low-sulfur diesel fuel (with a maximum sulfur content of 0.05 weight percent). The letter from NBB and NOPEC's notification are available in the public docket located at the above-mentioned address.

TABLE 2.—TEST ENGINE EMISSIONS (TRANSIENT TESTS)

	Gaseous and particulate					Smoke			Comment
	HC	CO	NO_X	PM	ΔPM	ACC	LUG	PEAK	
Engine:	g/bhp-hr				(percent)	Percent opacity			
	1.3	15.5	10.7	0.60	.....	20	15	50	1988 HDDE Standards.
Engine Dyno:									
1977 6V71N MUI[1]	0.86	3.18	11.72	0.282	.....	1.2	1.8	1.8	Baseline (2D).
Do	0.42	1.64	11.72	0.159	−43.6	1.4	2.1	2.1	2D + cat.
Do	0.38	0.86	12.11	0.166	−41.1	0.9	1.7	1.7	B20[3] + cat.[4]
Do	0.53	1.37	8.1	0.247	−12.4	4.6	5.4	5.6	2D, cat + 4° retard.
Do	0.42	0.94	8.47	0.213	−24.5	2.2	2.8	2.9	B20, cat + 4° retard.
	g/bhp-hr				ΔPM (percent)	Percent opacity			
1988 6V92TA DDEC[2] II	0.60	1.60	8.52	0.20	.....	6.0	5.3	8.7	Baseline (2D).
Do	0.21	0.95	9.06	0.11	−45.0	3.7	1.7	6.9	B20 + cat.
Do	0.29	1.21	8.18	0.14	−30.0	6.5	2.1	11.6	2D, cat + 1° retard.
Do	0.25	1.05	8.35	0.12	−40.0	5.1	2.5	8	B20, cat + 1° retard.

[1] MUI = Mechanical Unit Injector.
[2] DDEC = Detroit Diesel Electronic Control.
[3] The B20 used is SME blended 20 percent by volume with low-sulfur diesel fuel.
[4] The data include an invalid cold cycle. See the FEDERAL REGISTER document on October 22, 1996 (61 FR 54790) for discussion.

Table 3 below lists PM certification levels for the equipment. These levels are determined by applying the PM percentage reductions, predicted by the test data of Table 2, to the pre-rebuild PM levels provided in the program regulations [section 85.1403(c)]. The test data indicate that PM is reduced by 41.1 percent on the MUI engines (24.5 percent with 4 degrees retard) and 45.0 percent on DDEC engines (40.0 percent with 1 degree retard). No configuration of the candidate equipment is certified for the 6L71TA MUI of model year 1990, because the MUI test engine was determined not to be a ''worst-case'' test engine as required by the program regulations at section 85.1406(a)(2).

TABLE 3.—EQUIPMENT CONFIGURATIONS AND PM EMISSIONS LEVELS

Engine model	Model year	Equipment configuration	
		B20, Cat + stock timing	B20, Cat + retard[1]
6V92TA MUI	79–87	0.29	0.38[2]
6V92TA MUI	88–89	0.18	0.23[2]
6V92TA DDEC I	86–87	0.16	0.18
6V92TA DDEC II	88–89	0.17	0.19
6V92TA DDEC II	90–91	Not certified	0.19
6V92TA DDEC II	92–93	Not certified	0.15
6V71N MUI	73–87	0.29	0.38[2]
6V71N MUI	88–89	0.29	0.38[2]
6V71T MUI	85–86	0.29	0.38[2]
8V71N MUI	73–84	0.29	0.38[2]
6L71TA MUI	90	Not certified	Not certified
6L71TA MUI	88–89	0.18	0.23[2]
6L71TA DDEC	90–91	0.16	0.18

[1] Up to and including four (4) degrees fuel injection retard for MUI engines, and one (1) degree retard for DDEC engines.
[2] Not certified for compliance program 1.

As discussed in the **Federal Register** document of October 22, 1996, the data support a net programmatic benefit from certifying B20 with the oxidation catalyst, basically because it shows PM reductions compared with the baseline of conventional (low sulfur) diesel fuel without an exhaust catalyst. EPA believes that most of the reduction in PM emissions from the kit is probably attributable to the exhaust catalyst, although some additional PM emissions reduction is expected to be realized from addition of biodiesel.

The **Federal Register** document of October 22, 1996, discussed limited data provided by Twin Rivers which indicate that engine-out emissions of unregulated aldehydes may increase when fuel injection timing is retarded. As stated in that document, it is uncertain whether there would be an increase in ambient levels of aldehydes or, if there is an increase, whether it would become irritating to exposed populations. Operators concerned with the possibility for increased irritation to exposed populations may want to minimize the potential for increased ambient levels through management practices. Additional discussion is provided in the **Federal Register** document of October 22, 1996.

As stated in the October 1996 **Federal Register**, EPA is, in general, concerned when unregulated emissions increase. While EPA has not conducted a formal health risk analysis associated with the

above-mentioned increase in unregulated aldehyde emissions, it is uncertain whether there is any potential for an increased health risk. In the judgement of the Director of the Engine Programs and Compliance Division, the increase in emissions does not appear to be significant. Additionally, EPA believes that certifying the Twin Rivers' configurations with retarded timing is beneficial, for several reasons. The configuration of B20, catalyst, and timing retard meet the program requirement to reduce PM emissions, when compared to the baseline of neat diesel fuel without catalyst, plus provide a benefit of reduced emissions of NO_X. The Twin Rivers' certification made those configurations available as options to interested operators.

In summary, while there are uncertainties, in EPA's judgement, the program benefits and above factors offset these uncertainties. Therefore, EPA certified the Twin Rivers configurations with retarded injection timing and proposes to certify the NOPEC equipment likewise.

While unregulated aldehyde emissions data from buses using the certified Twin Rivers' equipment and the candidate equipment described in today's **Federal Register** document are limited, the data indicate that the directional changes in emissions relative to conventional diesel are dependent upon the fuel injection timing employed with a catalyst. If stock timing is used, aldehyde emissions can be expected to decrease relative to a baseline of conventional diesel without a catalyst. However, if retarded timing is used, then aldehyde emissions can be expected to increase relative to the baseline. Transit operators should be aware that with configurations using retarded timing, there is a possibility for ambient levels of aldehydes to increase. An increase in ambient levels is most likely to occur in micro environments having topographic or construction features (e.g., without adequate ventilation) that limit ambient dispersion of pollutants, such as enclosed bus malls or maintenance bays. If there is an increase in ambient levels, then there may be increased respiratory irritation by exposed populations. In summary, it is uncertain whether there would be an increase in ambient levels or, if there is an increase, whether it would become irritating to exposed populations. Operators concerned with the possibility may want to minimize the potential for increased ambient levels through its management practices, such as bus routing, bus scheduling, and/or mix of emission reduction technologies.

In the October 1996 **Federal Register** document, EPA stated that it is interested in gathering additional information on unregulated aldehyde emissions, and requested the public and industry provide information with regard to the content of the exhaust of compression-ignition engines fueled with any blend of biodiesel. Additionally, we requested operators using the retarded configuration to provide EPA information on related public complaints or comments, and actions taken to avert or correct perceived problems. No new information has been received since that document.

All configurations, that is, the biodiesel additive and catalyst, are covered by emissions performance and defect warranties offered by NOPEC described by the urban bus regulations at section 85.1409.

Section 211 of the Clean Air Act establishes fuel and fuel additive prohibitions, and gives EPA authority to waive certain of those prohibitions. EPA, however, does not believe that NOPEC must obtain a fuel additive waiver under section 211(f)(4) of the Clean Air Act before certifying its additive system for the following reasons.

The Act prohibits the introduction into commerce of any fuel or fuel additive that is not substantially similar to a fuel or fuel additive used in the certification of any model year 1975 or later vehicle or engine under section 206. The Administrator may waive this prohibition, if she determines that certain criteria are met. EPA believes that certification of an urban bus retrofit system constitutes the certification of an engine under section 206 for the purposes of the urban bus retrofit/rebuild program, and, since the additive is used in the certification of the system, a waiver is not required to market the additive in the limited context of use with the certified retrofit system. This determination does not affect whether the additive is ''substantially similar to any fuel or fuel additive'' outside the context of the urban bus retrofit/rebuild program. EPA's position on this matter is discussed in additional detail as it relates to use of another fuel additive (Lubrizol Corporation) at 60 FR 36139 on July 13, 1995.

If EPA certifies the candidate NOPEC equipment, then operators may use it immediately, as discussed below. NOPEC's notification indicates that the candidate equipment is to be certified for compliance option 2; however, as discussed below, EPA believes that configurations utilizing the catalytic muffler and reducing PM by at least 25 percent may also be used in compliance with some option 1 requirements (that is, for those particular engines requiring equipment certified to reduce PM by at least 25 percent). It cannot be used for engines for which the 0.10 g/bhp-hr standard is triggered.

In a **Federal Register** document dated May 31, 1995 (60 FR 28402), EPA certified the CMX™ exhaust catalyst manufactured by the Engelhard Corporation, as a trigger of program requirements. Until the 0.10 g/bhp-hr PM standard is triggered, that certification means that rebuilds and replacements of applicable urban bus engines performed 6 months or more after that date of certification (that is, rebuilds or replacements after December 1, 1995), must be performed using equipment certified to reduce PM emissions by 25 percent or more. Under Option 1, operators could use the NOPEC equipment if certified to reduce PM by at least 25 percent, or other equipment certified to provide at least a 25 percent reduction, unless equipment is certified which triggers the 0.10 g/bhp-hr PM standard. The 0.10 g/bhp-hr standard has been triggered for 6V92TA MUI engines, such that rebuilds or replacements after September 14, 1997 must be performed using equipment certified to the 0.10 g/bhp-hr standard. The configuration of B20 blend, Engelhard catalyst, and injection retard has been demonstrated to comply with the standard to reduce PM by at least 25 percent, but only when used with the following engines: 6V92TA DDEC I and DDEC II, and 6L71TA DDEC.

Operators who choose to comply with Option 2 and install the NOPEC equipment, would use the PM emission level(s) established during the certification process, in their calculations for target or fleet level as specified in the program regulations.

In accordance with the program requirements of section 85.1404(a), operators using the candidate NOPEC equipment would have to maintain purchase records of the B20 blend if the operator purchases the premixed blend from a fuel supplier, or, of biodiesel and low-sulfur diesel fuel if the operator mixes the B20. Such records would be subject to review in the event of an audit of an urban bus operator by EPA. To be in compliance with program requirements, operators must be able to demonstrate that B20 is being used in the proper proportions required by the candidate equipment.

At a minimum, EPA expects to evaluate the NOPEC notification of intent to certify, and other materials submitted as applicable, to determine whether there is adequate

demonstration of compliance with: (1) the certification requirements of section 85.1406, including whether the testing accurately substantiates the claimed emission reduction or emission levels; and, (2) the requirements of section 85.1407 for a notification of intent to certify.

EPA requests that those commenting also consider these regulatory requirements, plus provide comments on any experience or knowledge concerning: (a) problems with installing, maintaining, and/or using the candidate equipment on applicable engines; and, (b) whether the equipment is compatible with affected vehicles.

The date of this document initiates a 45-day period during which EPA will accept written comments relevant to whether or not the equipment described in the NOPEC notification of intent to certify should be certified pursuant to the urban bus retrofit/rebuild regulations. Interested parties are encouraged to review the notification of intent to certify and provide comment during the 45-day period. Please send separate copies of your comments to each of the above two addresses.

Additionally, EPA is aware that the biodiesel industry is working to address other regulatory issues related to the EPA's fuel and fuel additive requirements under 40 CFR part 79. Today's **Federal Register** document applies to the limited context of the urban bus program, and is not intended to set precedent as a generic definition of ''biodiesel.''

EPA will review this notification of intent to certify, along with comments received from interested parties, and attempt to resolve or clarify issues as necessary. During the review process, EPA may add additional documents to the docket as a result of the review process. These documents will also be available for public review and comment within the 45-day period.

Dated: November 13, 1997.

Robert D. Brenner,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 97–30519 Filed 11–19–97; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

November 14, 1997.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before January 20, 1998. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 234, 1919 M St., N.W., Washington, DC 20554 or via internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judy Boley at 202–418–0214 or via internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0490.

Title: Section 74.902, Frequency assignments.

Form No.: FCC 330/FCC 327.

Type of Review: Extension of a currently approved collection.

Respondents: Businesses or other for profit.

Number of Respondents: 5.

Estimated Time Per Response: 0.5 hours.

Frequency of Response: On occasion reporting requirement.

Cost to Respondents: N/A.

Total Annual Burden: 2.5 hours.

Needs and Uses: Section 74.902 dictates that when a point-to-point ITFS station on the E and F MDS channels is involuntarily displaced by an MDS applicant, that the MDS applicant files the appropriate application for suitable alternative spectrum. The applications that would be used would be the FCC 327 (3060–0055) and the FCC 330 (3060–0062). The burdens for these involuntarily displaced ITFS are included in the estimates for the FCC 327 and 330. Additionally, Section 74.902(i) requires that a copy of this application be served on the ITFS licensee to be moved. The data will be used by the ITFS licensee to oppose the involuntary migration if the proposal would not provide comparable ITFS service and to ensure that the public interest is served.

OMB Control No.: 3060–0491.

Title: Section 74.991, Wireless Cable Application Procedures.

Form No.: FCC 330/FCC 304.

Type of Review: Extension of a currently approved collection.

Respondents: Businesses or other for profit.

Number of Respondents: 100.

Estimated Time Per Response: 4.5 hours (0.5 hours respondent/4 hours attorney).

Frequency of Response: On occasion reporting requirement.

Cost to Respondents: $116,240.

Total Annual Burden: 50 hours.

Needs and Uses: Section 74.991 requires that a wireless cable application be filed on FCC 330 (3060–0062), Sections I and V, with a complete FCC 304 appended. The application must include a cover letter clearly indicating that the application is for a wireless cable entity to operate on ITFS channels. The applicant must also, within 30 days of filing its application give local public notice in a newspaper. The specific data that must be included in the newspaper publication is contained in Section 74.991(c). The notice must be published twice a week for two consecutive weeks. The data is used by FCC staff to insure that proposals to operate a wireless cable system on ITFS channels do not impair or restrict any reasonably foreseeable ITFS use. The data is also used to insure that applicants are qualified to become a Commission licensee and that proposals do not cause interference.

OMB Control No.: 3060–0206.

Title: Part 21, Multipoint Distribution Service.

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Businesses or other for profit.

Number of Respondents: 8,299.

Estimated Time Per Response: Ranges from 0.083 hours to 10 hours depending on rule section.

Frequency of Response: On occasion reporting requirement.

Cost to Respondents: $481,800.

Total Annual Burden: 16,113.52 hours.

Needs and Uses: The information requested under part 21 is used by the Commission staff to fulfill its obligations as set forth in Sections 308 and 309 of the Communications Act of 1934, as amended, to determine the technical, legal and other qualifications of applicants to operate a station in the MDS services. The information is also used to determine whether grant of an application will service the public interest, convenience and necessity, as required by Section 309 of the Communications Act. The staff also uses this information to ensure that applicants and licensees comply with the ownership and transfer restrictions imposed by Section 310 of the Act.

On February 8, 1996, the Commission adopted a Report and Order in WT Docket No. 94–148, Terrestrial Microwave Fixed Radio Services. This Report and Order adopted a new part 101 and reorganized and amended part 21. With this action, part 21 contains only rules applicable to MDS. This action was approved by OMB on 9/8/96 with an OMB Control Number of 3060–0718.

The information is used by Commission staff in carrying out its above described duties under the Act. Without this information, the Commission would not be able to carry out its statutory responsibilities.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–30498 Filed 11–19–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Privacy Act of 1974: Systems of Records

AGENCY: Federal Communications Commission (FCC).

ACTION: Notice of an altered system of records.

SUMMARY: This notice meets the requirements of the Privacy Act of 1974 regarding the publication of an agency's notice of systems of records. It documents changes to an FCC's system of records.

DATES: Written comments on the proposed altered system should be received by December 22, 1997. Office of Management and Budget, which has oversight responsibility under the Privacy Act to review the system may submit comments on or before December 30, 1997. The proposed system shall be effective without further notice on December 30, 1997 unless the FCC receives comments that would require a contrary determination. As required by 5 U.S.C. 552a(o) of the Privacy Act, the FCC submitted reports on this altered system to both Houses of Congress.

ADDRESSES: Comments should be mailed to Judy Boley, Privacy Act Officer, Performance Evaluation and Records Management, Room 234, FCC, 1919 M Street, N.W., Washington, D.C. 20554. Written comments will be available for inspection at the above address between 9:00 a.m. and 4:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Judy Boley, Privacy Act Officer, Performance Evaluation and Records Management, Room 234, FCC, 1919 M Street, NW., Washington, DC 20554, (202) 418–0214 or via internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: As required by the Privacy Act of 1974, 5 U.S.C. 552a(e)(4), this document sets forth notice of the existence and character of the system of records maintained by the FCC. This agency previously gave complete notice of its systems of records by publication in the **Federal Register** on May 18, 1992, 57 FR 21091. This notice is a summary of more detailed information which may be viewed at the location and hours given in the **ADDRESSES** section above.

The proposed changes are as follows.

FCC/OMD–4, ''Security Office Control Files.'' This system is used by the FCC Security Officer and the Personnel Security Specialist of the Security Office for reference in connection with the control of position sensitivity and security clearances. We are proposing to expand the categories of records to include contractors. We are also proposing to include the Social Security number for retrieving, notification procedures and accessing information. The existing card files are also being eliminated and the proposed system will maintain the records in a computer database.

FCC/OMD–4

SYSTEM NAME:

Security Office Control Files.

SYSTEM LOCATION:

Federal Communications Commission (FCC), Office of Managing Director, Security Operations Staff, 1919 M Street, NW., Washington, DC 20554.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former FCC employees and contractors.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system consists of a computer database, last, first, and middle name, filed alphabetically by last name, containing Social Security Number, date of birth, place of birth, classification as to position sensitivity, types and dates of investigations, investigative reports, dates and levels of clearances.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Orders 10450 and 12065.

PURPOSE(S):

These records are used by FCC Security Officer and the Personnel Security Specialist of the Security Office for reference in connection with the control of position sensitivity and security clearances.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. For disclosure to a Federal agency or the District of Columbia Government, in response to its request, in connection with the hiring or retention of an employee/contractor, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other benefit.

2. For disclosure to the security office of an agency in the executive, legislative, or judicial branch, or the District of Columbia Government, in response to its request for verification of security clearances, of FCC employees/contractors to have access to classified data or areas where their official duties require such access.

3. Where there is an indication of a violation or potential violation of a statute, regulation, rule or order, records from this system may be referred to the appropriate Federal, state, or local agency responsible for investigating or prosecuting a violation or for enforcing or implementing the statute, rule, regulation or order.

4. A record from this system may be disclosed to request information from a Federal, state, or local agency

maintaining civil, criminal, or other relevant enforcement information or other pertinent information, such as licenses, if necessary to obtain information relevant to a Commission decision concerning the hiring or retention of an employee/contractor, the issuance of a security clearance, the letter of a contract, or the issuance of a license, grant or other benefit.

5. A record on an individual in this system of records may be disclosed to a Congressional office in response to an inquiry the individual has made to the Congressional office.

6. A record from this system of records may be disclosed to GSA and NARA for the purpose of records management inspections conducted under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall not be used to make a determination about individuals.

7. In each of these cases, the FCC will determine whether disclosure of the records is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in the stand alone computer database.

RETRIEVABILITY:

Records are retrieved by the name and social security numbers of individuals on whom they are maintained.

SAFEGUARDS:

The stand alone computer is stored within a secured area.

RETENTION AND DISPOSAL:

When an employee/contractor leaves the agency the file in the database is deleted. If there is an investigative file on an employee/contractor, the file is kept 5 years after the employee/contractor leaves the agency.

SYSTEM MANAGER(S) AND ADDRESS:

FCC, Office of Managing Director, 1919 M Street, N.W., Washington, DC 20554.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system of records contains information about them should contact the system manager indicated above. Individuals must furnish the following information for their records to be located and identified:

a. Full name.
b. Social Security Number.

RECORD ACCESS PROCEDURES:

Individuals wishing to request access to records about them should contact the system manager indicated above. Individuals must furnish the following information for their record to be located and identified:

a. Full name.
b. Social Security Number.

An individual requesting access must also follow FCC Privacy Act regulations regarding verification of identity and access to records (47 CFR 0.554 and 0.555).

CONTESTING RECORD PROCEDURES:

Individuals wishing to request amendment of their records should contact the system manager indicated above. Individuals must furnish the following information for their record to be located and identified:

a. Full name.
b. Social Security Number.

An individual requesting amendment must also follow the FCC Privacy Act regulations regarding verification of identity and amendment of records (47 CFR 0.556 and 0.557).

RECORD SOURCE CATEGORIES:

a. The individual to whom the information applies.

b. Investigative files maintained by the OPM, Federal Investigations Processing Center.

c. Employment information maintained by the Personnel office of the FCC.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–30413 Filed 11–19–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 15, 1997.

A. Federal Reserve Bank of Cleveland (Jeffery Hirsch, Banking Supervisor) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. Premier Financial Bancorp, Inc., Georgetown, Kentucky; to acquire 100 percent of the voting shares of Ohio River Bank, Steubenville, Ohio.

B. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. F & M Bancorporation, Inc., and F & M Merger Corporation, Kaukauna, Wisconsin; to acquire Sentry Bancorp, Inc., Edina, Minnesota, and thereby indirectly acquire Cannon Valley Bank, Dundas, Minnesota. In addition, Sentry Bancorp, Inc., has also applied to merge with F & M Merger.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. First Banks, Inc., St. Louis, Missouri; to acquire 100 percent of the voting shares of Pacific Bay Bank, San Pablo, California.

D. Federal Reserve Bank of Minneapolis (Karen L. Grandstrand, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480-2171:

1. Montana Security, Inc., Havre, Montana; to acquire 100 percent of the voting shares of Northeast Montana Bank Shares, Inc., Poplar, Montana, and its subsidiary, Traders State Bank of Poplar, Poplar, Montana; and Veis Bankshares, Inc., Scobey, Montana, and its subsidiary, The Citizens State Bank of Scobey, Scobey, Montana.

Board of Governors of the Federal Reserve System, November 17, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–30532 Filed 11–19–97; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice of a Cooperative Agreement With the American Indian Higher Education Consortium

The Office of Minority Health (OMH), Office of Public Health and Science (OPHS) announces that it will enter into an umbrella cooperative agreement with the American Indian Higher Education Consortium (AIHEC). This cooperative agreement will establish the broad framework in which specific projects can be funded as they are identified during the project period.

The purpose of this cooperative agreement is to assist AIHEC in expanding and enhancing its activities relevant to the tribally controlled community colleges affected by executive order #13021. Further, this agreement establishes mechanisms for the 22 Operating and Staffing Divisions of the DHHS to comply with the mandates contained in the order. OMH, as the lead agency for implementing the executive order, will provide consultation, including administrative and technical assistance as needed for the execution and evaluation of all aspects of this cooperative agreement. OMH will also participate and/or collaborate with the awardee in any workshops or symposia to exchange information, opinions or activities that will enhance the educational status of the American Indian/Alaska Native (AI/AN) students attending the Tribal Colleges. Further, OMH will coordinate the Inter/Intra departmental activities as directed in the executive order.

Authorizing Legislation

This cooperative agreement is authorized under Title XVII, Section 1707(d)(1) of the Public Health Service Act, as amended by Public Law 101–527.

Background

Assistance will be provided only to AIHEC. No other applications are solicited. AIHEC is the only organization capable of administering this cooperative agreement because:

- AIHEC is the only national organization that is comprised of and represents the Tribal Colleges and Universities. AIHEC signed or is in the process of signing several cooperative agreements and MOA's with other Federal Departments in compliance with the directives of Executive Order #13021. In order to assure continuity with other Federal Departments, a cross fertilization of efforts, and minimize any redundancy of activities, AIHEC should be the recipient of the cooperative agreement;
- AIHEC, founded in 1972, has been involved in the 20-year effort that resulted in the President signing the executive order. The organization's board of directors consists of Presidents of each of the Tribal Colleges. Also, the organization has well established linkages with AI/AN Tribes, national Indian organizations and other Federal Departments that are actively involved with the implementation of the executive order;
- AIHEC has highly qualified management staff with the background and experience to develop, guide, operate and evaluate the complex elements of this cooperative agreement. They have extensive experience in mediation with Federal Departments and tribal governments;
- AIHEC has demonstrated through past activities its ability to assist the Tribal Colleges in their development and expansion. In 1972, AIHEC was founded by the first six Tribally Controlled Community Colleges and began to develop and implement programs that are consistent with the inherent rights of tribal sovereignty and self-determination; and
- AIHEC has assisted the Tribal Colleges in the development and maintenance of the highest standards of quality education for AI/ANs by improving the accessibility of educational programs, significantly increasing student enrollments and assisting the tribal colleges in becoming fully accredited institutions of higher education.

This cooperative agreement will be awarded in FY 1998 for a 12-month budget period within a project period of 5 years. Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

DATES: Comments must be received on or before December 5, 1997.

ADDRESSES: Comments shall be mailed to CDR Robert J. Carson, Office of Minority Health, 5515 Security Lane, Suite 1000, Rockville, Maryland 20852, telephone (301) 443–5084, fax (301) 594–0767, E-MAIL rcarson@osophs.dhhs.gov.

FOR FURTHER INFORMATION CONTACT: CDR Robert J. Carson, Office of Minority Health, 5515 Security Lane, Suite 1000, Rockville, Maryland 20852, telephone (301) 443–5084, fax (301) 594–0767, E-MAIL rcarson@osophs.dhhs.gov.

Clay E. Simpson, Jr.,

Deputy Assistant Secretary Director for Minority Health.

[FR Doc. 97–30566 Filed 11–19–97; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[INFO–98–04]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques for other forms of information technology. Send comments to Wilma Johnson, CDC Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Projects

1. Defining Gulf War Illness; New

This study will characterize and compare alternative classifications for symptoms and functional disability which remain medically unexplained in Gulf War veterans. This will be accomplished in three phases. Phase I will assess persistence and stability of symptoms over time, as well as compare the performance of data-driven case definitions derived from two samples: (1) the New Jersey Center for Environmental Hazards Research

sample of Gulf War veterans participating in the Department of Veterans Affairs Gulf War Registry; and (2) a cohort of Air Force members from a previous CDC study of Gulf War veterans and Gulf War-era controls from Pennsylvania and Florida. In addition to assessing data-driven case definitions for illness among Gulf War veterans, existing definitions for medically unexplained symptoms, such as chronic fatigue syndrome, multiple chemical sensitivity, and fibromyalgia will be evaluated. Phase II will attempt to assess the generalizability of both derived and existing case definitions in a random sample of deployed and non-deployed Gulf War era veterans. Phase III will consist of a standardized telephone interview for the assessment of psychiatric conditions. This will be administered to a sample of Phase I and Phase II participants who are identified through their responses to paper-and-pencil questionnaires as having high levels of psychologic distress. There is no cost to respondents.

Respondents	No. of Respondents	No. of Responses/ Respondent	Avg. Burden/ Response (in hrs.)	Total Burden (in hrs.)
Administer questionnaire to the New Jersey Center for Environmental Hazards Research sample of the Department of Veterans Affairs Gulf War Registry veterans and the previous CDC Air Force Cohort (Phase)	7,312	1	0.45	5,484
Administer questionnaire to new random sample of Gulf War veterans and era controls (Phase II)	3,000	1	.45	2,250
Telephone survey of Phase I and Phase II participants who screened positive for psychiatric conditions	600	1	2	1,200
Total				8,934

Dated: November 13, 1997.

Wilma G. Johnson,

Acting Associate Director for Policy Planning and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–30477 Filed 11–19–97; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Citizens Advisory Committee on Public Health Service (PHS) Activities and Research at Department of Energy (DOE) Sites: Idaho National Engineering and Environmental Laboratory Health Effects Subcommittee; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Agency for Toxic Substances and Disease Registry (ATSDR) and the Centers for Disease Control and Prevention (CDC) announce the following meeting.

Name: Citizens Advisory Committee on PHS Activities and Research at DOE Sites: Idaho National Engineering and Environmental Laboratory (INEEL) Health Effects Subcommittee.

Times and Dates: 8:30 a.m.–5 p.m., December 11, 1997, 7 p.m.–9 p.m., December 11, 1997, 8:30 a.m.–4 p.m., December 12, 1997.

Place: Holiday Inn Westbank, 475 River Parkway, Idaho Falls, Idaho 83402, telephone 208/523–8000, FAX 208/529–9610.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

Background

Under a Memorandum of Understanding (MOU) signed in December 1990 with DOE and replaced by an MOU signed in 1996, the Department of Health and Human Services (HHS) was given the responsibility and resources for conducting analytic epidemiologic investigations of residents of communities in the vicinity of DOE facilities, workers at DOE facilities, and other persons potentially exposed to radiation or to potential hazards from non-nuclear energy production use. HHS delegated program responsibility to CDC.

In addition, an MOU was signed in October 1990 and renewed in November 1992 between ATSDR and DOE. The MOU delineates the responsibilities and procedures for ATSDR's public health activities at DOE sites required under sections 104, 105, 107, and 120 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or ''Superfund''). These activities include health consultations and public health assessments at DOE sites listed on, or proposed for, the Superfund National Priorities List and at sites that are the subject of petitions from the public; and other health-related activities such as epidemiologic studies, health surveillance, exposure and disease registries, health education, substance-specific applied research, emergency response, and preparation of toxicological profiles.

Purpose: This subcommittee is charged with providing advice and recommendations to the Director, CDC, and the Administrator, ATSDR, regarding community, American Indian Tribes, and labor concerns pertaining to CDC's and ATSDR's public health activities and research at this DOE site. The purpose of this meeting is to provide a forum for community, American Indian Tribal, and labor interaction and serve as a vehicle for community concern to be expressed as advice and recommendations to CDC and ATSDR.

Matters to be Discussed: Agenda items include presentations from the National Center for Environmental Health (NCEH) regarding current activities, the National Institute for Occupational Safety and Health and ATSDR will provide updates on the progress of current studies, and working group discussions. On December 11, at 7 p.m., the meeting will continue in order to allow more time for public input and comment.

Agenda items are subject to change as priorities dictate.

CONTACT PERSONS FOR MORE INFORMATION: Arthur J. Robinson, Jr., or Sharona Woodley, Radiation Studies Branch, Division of Environmental Hazards and Health Effects, NCEH, CDC, 4770 Buford Highway, NE, (F–35), Atlanta, Georgia 30341–3724, telephone 770/488–7040, FAX 770/488–7044.

Dated: November 13, 1997.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–30475 Filed 11–19–97; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee for Energy-Related Epidemiologic Research; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Advisory Committee for Energy-Related Epidemiologic Research.

Times and Dates: 9 a.m.–5 p.m., December 8, 1997; 9 a.m.–12 noon, December 9, 1997.

Place: Hyatt Regency Crystal City, 2799 Jefferson Davis Highway, Arlington, Virginia 22202, telephone 703/418–1234, FAX 703/418–1289.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

Purpose: This committee is charged with providing advice and recommendations to the Secretary; the Assistant Secretary for Health; the Director, CDC; and the Administrator, Agency for Toxic Substances and Disease Registry (ATSDR), on establishment of a research agenda and the conduct of a research program pertaining to energy-related analytic epidemiologic studies.

Matters to be Discussed: Agenda items will include: presentations from the National Center for Environmental Health (NCEH), the National Institute for Occupational Safety and Health, and ATSDR updates on the progress of current studies; a discussion of Work Group recommendations, and public involvement activities.

Agenda items are subject to change as priorities dictate.

CONTACT PERSON FOR MORE INFORMATION: Michael J. Sage, Deputy Chief, Radiation Studies Branch, Division of Environmental Hazards and Health Effects, NCEH, CDC, 4770 Buford Highway, NE, (F–35), Atlanta, Georgia 30341–3724, telephone 770/488–7040, FAX 770/488–7044.

Dated: November 13, 1997.

Carolyn J. Russell,

Director, Management Analysis and Services Office Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–30476 Filed 11–19–97; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention (CDC)

The National Center for Environmental Health (NCEH) of the Centers for Disease Control and Prevention (CDC); Cancellation of Meeting

This notice announces the cancellation of a previously announced meeting: Workshop on Screening and Tracking Systems for Early Hearing Detection and Intervention (EHDI).

Federal Register Notice Citation of Previous Announcement: FR Doc. 17oc97–115. Published October 17, 1997 (Volume 62, Number 200, Page 54116).

Previously Announced Times and Dates: 8 a.m.–5 p.m. December 11, 1997. 8:30 a.m.–1 p.m. December 12, 1997.

Change in the Meeting: This meeting has been canceled.

CONTACT PERSON FOR MORE INFORMATION: June Holstrum, Ph.D., Division of Birth Defects and Developmental Disabilities, CDC, NCEH, 4770 Buford Highway, NE, M/S F–15, Atlanta, Georgia 30341. E-mail ehdi@cdc.gov, telephone 770/488–7401, fax 770/488–7361.

Dated: November 13, 1997.

Carolyn J. Russell,

Director, Management Analysis and Services Office Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–30480 Filed 11–19–97; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97F–0428]

Amoco Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Amoco Corp. has filed a petition proposing that the food additive regulations be amended to include dimethyl-2,6-naphthalene dicarboxylate and 2,6-naphthalene dicarboxylic acid as polybasic acids intended for use as components of resinous and polymeric coatings that contact food.

FOR FURTHER INFORMATION CONTACT: Mark A. Hepp, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3098.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 7B4555) has been filed by Amoco Corp., One Prudential Plaza, 130 East Randolph St., Chicago, IL 60601–6207. The petition proposes to amend the food additive regulations in § 175.300 *Resinous and polymeric coatings* (21 CFR 175.300) to include dimethyl-2,6-naphthalene dicarboxylate and 2,6-naphthalene dicarboxylic acid as polybasic acids intended for use as components of resinous and polymeric coatings that contact food.

The agency has determined under 21 CFR 25.32(i) and (j) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: October 21, 1997.

Alan M. Rulis,

Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 97–30481 Filed 11–19–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food And Drug Administration

[Docket No. 97F–0469]

General Electric Co.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that General Electric Co. has filed a petition proposing that the food additive regulations be amended to provide for the expanded safe use of phosphorous acid, cyclic butylethyl propanediol, 2,4,6-tri-tert-butylphenyl ester, which may contain up to 1 percent by weight of triisopropanolamine, as an antioxidant and/or stabilizer in high density polyethylene and high density olefin copolymers intended for use in contact with food.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3081.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act

(sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 8B4567) has been filed by General Electric Co., One Lexan Lane, Mt. Vernon, IN 47620–9364. The petition proposes to amend the food additive regulations in § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) to provide for the expanded safe use of phosphorous acid, cyclic butylethyl propanediol, 2,4,6-tri-tert-butylphenyl ester, which may contain up to 1 percent by weight of triisopropanolamine, as an antioxidant and/or stabilizer in high density polyethylene and high density olefin copolymers intended for use in contact with food.

The agency has determined under 21 CFR 25.32(i) that this action is of the type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: November 3, 1997.

Alan M. Rulis,

Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 97–30484 Filed 11–19–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97M–0457]

Urologix, Inc.; Premarket Approval of the T3® Targeted Transurethral Thermoablation System: Model 4000

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Urologix, Inc., Minneapolis, MN, for premarket approval, under the Federal Food, Drug, and Cosmetic Act (the act), of the T3® Targeted Transurethral Thermoablation System: Model 4000. FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of August 22, 1997, of the approval of the application.

DATES: Petitions for administrative review by December 22, 1997.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Nicole L. Wolanski, Center for Devices and Radiological Health (HFZ–472), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2194.

SUPPLEMENTARY INFORMATION: On February 24, 1997, Urologix, Inc., Minneapolis, MN 55447, submitted to CDRH an application for premarket approval of the T3® Targeted Transurethral Thermoablation System: Model 4000. The device is a transurethral microwave thermal therapy system and is indicated to relieve symptoms associated with benign prostatic hyperplasia (BPH) and is indicated for men with prostatic lengths of 30 to 50 millimeters.

In accordance with the provisions of section 515(c)(2) of the act (21 U.S.C. 360e(c)(2)) as amended by the Safe Medical Devices Act of 1990, this premarket approval application (PMA) was not referred to the Gastroenterology and Urology Devices Panel of the Medical Devices Advisory Committee, an FDA advisory committee, for review and recommendation because the information in the PMA substantially duplicates information previously reviewed by this panel.

On August 22, 1997, CDRH approved the application by a letter to the applicant from the Deputy Director, Clinical and Review Policy, the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act authorizes any interested person to petition, under section 515(g) of the act, for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under 21 CFR part 12 of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under 21 CFR 10.33(b). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of the review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before December 22, 1997, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: October 16, 1997.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 97–30482 Filed 11–19–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–219]

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) the necessity and utility of the proposed information collection for the proper

performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: New Collection; *Title of Information Collection:* End Stage Renal Disease (ESRD) Managed Care Demonstration Evaluation; *Form No.:* HCFA–R–219; *Use:* This demonstration is congressionally mandated under the Social Health Maintenance Organization (SHMO) requirements. This evaluation will demonstrate the effectiveness of integrating acute and chronic care patients with ESRD through expanded community care case management services, using innovative approaches to financing methodologies and benefit design. *Frequency:* Other 0,12, and 30 months; *Affected Public:* Business or other for-profit, Individuals or Households; *Number of Respondents:* 5,365; *Total Annual Responses:* 5,365; *Total Annual Hours:* 4,431.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, or to obtain the supporting statement and any related forms, E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address:

HCFA, Office of Information Services, nformation Technology Investment Management Group, Division of HCFA Enterprise Standards, *Attention:* John Rudolph, Room C2–26–17, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: November 12, 1997.

John P. Burke III,

HCFA Reports Clearance Officer, Division of HCFA Enterprise Standards, Health Care Financing Administration.

[FR Doc. 97–30471 Filed 11–19–97; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–64]

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Reinstatement, without change, of a previously approved collection for which approval has expired; *Title of Information Collection:* Quarterly Medicaid Statement of Expenditures for the Medical Assistance Program; *Form No.:* HCFA–64; *Use:* This form is used by State Medicaid agencies to report their actual program benefit costs and administrative expenses to the Health Care Financing Administration (HCFA). HCFA uses this information to compute the Federal financial participation (FFP) for the State's Medicaid Program costs. *Frequency:* Quarterly; *Affected Public:* State, Local or Tribal Government; *Number of Respondents:* 56; *Total Annual Responses:* 224; *Total Annual Hours:* 11,984.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, or to obtain the supporting statement and any related forms, E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards, Attention: John Rudolph, Room C2–26–17, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: November 14, 1997.

John P. Burke III,

HCFA Reports Clearance Officer, Division of HCFA Enterprise Standards, Health Care Financing Administration.

[FR Doc. 97–30530 Filed 11–19–97; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–316]

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

T*ype of Information Collection Request:* Reinstatement without change of a previously approved collection for which approval has expired; *Title of Information Collection:* Medicaid, Integrated Quality Control Review Worksheet and Supporting Regulations 42 CFR 431.800, 42 CFR 431.865; *Form No.:* HCFA–316 OMB # 0938–0094; *Use:* States use the Integrated Quality Control Review Worksheet to collect quality control (QC) data captured during the course of all Federally required State QC reviews of Food Stamp (FS) and Medicaid programs. The integrated worksheet is designed to be flexible for use in fully integrated, partially integrated, or separate QC program reviews. The primary objective of the QC system is to measure, identify, and

reduce the level of misspent Medicaid funds as a result of erroneous eligibility determinations. HCFA uses this information to identify problem areas and plan corrective action initiatives to reduce erroneous expenditures. *Frequency:* Monthly; *Affected Public:* State, Local or Tribal Government; *Number of Respondents:* 51; *Total Annual Responses:* 19,141; *Total Annual Hours:* 262,072.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, or to obtain the supporting statement and any related forms, E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards, Attention: John Rudolph, Room C2–26–17, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Date: November 14, 1997.

John P. Burke III,

HCFA Reports Clearance Officer, Division of HCFA Enterprise Standards, Health Care Financing Administration.

[FR Doc. 97–30531 Filed 11–19–97; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–565]

Agency Information Collection Activities: Submission For OMB Review; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Reinstatement, without change, of a previously approved collection for which approval has been expired; *Title of Information Collection:* Medicare Qualification Statement for Federal Employees and Supporting Regulations in 42 CFR 406.15; *Form No.:* HCFA–565 (OMB #0938–0501); *Use:* The HCFA–565 is completed by an individual filing for hospital insurance (HI) benefits (Part A) based upon their federal employment. This information is necessary to determine if HCFA/SSA can use federal employment prior to 1983 to qualify for free Part A. The data is passed to the HI master record, the Enrollment Data Base (EDB). An HI record showing appropriate entitlement is established an if applicable, a Medicare card is issued.; *Frequency:* Other (one time only); *Affected Public:* Individuals or Households, and Federal Government; *Number of Respondents:* 4,300; *Total Annual Responses:* 4,300; *Total Annual Hours:* 717.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: November 12, 1997.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards.

[FR Doc. 97–30472 Filed 11–19–97; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute on Drug Abuse (NIDA) Initial Review Group and Special Emphasis Panel meetings.

Purpose/Agenda: To review and evaluate grant applications and contract proposals.

Name of Committee: AIDS Behavioral Research Subcommittee.

Date: December 2–3, 1997.

Time: 8:30 a.m.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Mary C. Custer, Ph.D., Scientific Review Administrator, Office of Extramural Program Review, National Institute on Drug Abuse, 5600 Fishers Lane, Room 10–22, Telephone (301) 443–2620.

Name of Committee: NIDA Special Emphasis Panel (Contract Review—''Quantitative Analysis of and Method Development for Cannabinoids, Endogenous Compounds, and Other Drugs of Abuse and Related Compounds by Radioimmunoassay or Related Methods'').

Date: December 19, 1997.

Time: 10:30 a.m.

Place: Office of Extramural Program Review, National Institute on Drug Abuse, NIH, 5600 Fishers Lane, Room 10–42, Rockville, MD 20857 (Telephone Conference).

Contact Person: Mr. Eric Zatman, Contract Review Specialist, Office of Extramural Program Review, National Institute on Drug Abuse, 5600 Fishers Lane, Room 10–42, Rockville, MD 20857, Telephone (301) 443–1644.

The meetings will be closed in accordance with provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. The applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Numbers: 93.277, Drug Abuse Scientist Development, Research Scientist Development, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health)

Dated: November 13, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–30421 Filed 11–19–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel meeting:

Name Of SEP: ZDK1–GRB–7–(J2).
Date: December 5, 1997.
Time: 8:30 a.m.
Place: Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, Maryland 20815.
Contact: Lakshmanan Sankaran, Ph.D., Scientific Review Administrator, Review Branch, DEA, NIDDK, Natcher Building, Room 6as–25F, National Institutes of Health, Bethesda, Maryland 20892–6600, Phone: (301) 594–7799.
Purpose/Agenda: To review and evaluate grant applications.

This meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.847–849, Diabetes, Endocine and Metablolic Diseases; Digestive Diseases and Nutrition; and Kidney Diseases, Urology and Hematology Research, National Institutes of Health

Dated: November 7, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–30422 Filed 11–19–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings of the National Institute of Mental Health Special Emphasis Panel:

Agenda/Purpose: To review and evaluate grant applications.
Committee Name: National Institute of Mental Health Special Emphasis Panel.
Date: November 24, 1997.
Time: 2 p.m.
Place: Parklawn, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857.
Contact Person: Donna Ricketts, Parklawn, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–3936.

Committee Name: National Institute of Mental Health Special Emphasis Panel.
Date: November 25, 1997.
Time: 2 p.m.
Place: Parklawn, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857.
Contact Person: Donna Ricketts, Parklawn, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–3936.

Committee Name: National Institute of Mental Health Special Emphasis Panel.
Date: December 2, 1997.
Time: 2 p.m.
Place: Parklawn, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857.
Contact Person: Donna Ricketts, Parklawn, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–3936.

Committee Name: National Institute of Mental Health Special Emphasis Panel.
Date: December 4, 1997.
Time: 1 p.m.
Place: Parklawn, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857.
Contact Person: Donna Ricketts, Parklawn, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–3936.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than fifteen days prior to the meetings due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program Numbers 93,242, 93.281, 93.282)

Dated: November 13, 1997.

Laverne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–30423 Filed 11–19–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Meeting of the Board of Scientific Counselors, NIAMS

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the Board of Scientific Counselors, National Institute of Arthritis and Musculoskeletal and Skin Diseases (NIAMS), November 24–25, 1997. The meeting will be held at the National Institutes of Health, Building 31, Room 4C32, 9000 Rockville Pike, Bethesda, Maryland 20892–2425.

The Board meeting will be open to the public on November 24 from 8:00 a.m. until 3:00 p.m. and on November 25 from 8:00 a.m. to 10:00 a.m. The agenda includes reports by the Director, NIAMS, and the Scientific Director, Division of Intramural Research, NIAMS.

The meeting will be closed on November 24 from 3:00 p.m. to 5:00 p.m. and on November 25 from 10:00 a.m. to adjournment in accordance with the provisions set forth in sections 552b(c)(6), Title 5 U.S.C. for the review, discussion, and evaluation of individual programs and projects conducted by the National Institutes of Health, including consideration of personnel qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Substantive information regarding the meeting may be obtained from Ms. Linda Peterson, Board Secretary, NIAMS, Building 10, Room 9N228, National Institutes of Health, Bethesda, Maryland 20892–2425, Telephone: 301–496–3375.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitation imposed by the review cycle.

Dated: November 13, 1997.

LaVeen Pond,

Acting Committee Management Officer, NIH.

[FR Doc. 97–30424 Filed 11–19–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4142–N–03]

Submission for OMB Review: Comment Request

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due date: December 22, 1997.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Gloria S. Diggs, Acting Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Diggs.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: November 10, 1997.

David S. Cristy,

Acting Director, Information Resources, Management Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Title of Proposal: Floodplain Management and the Protection of Wetlands (FR–4142).

Office: Community Planning and Development.

OMB Approval Number: 2506–0151.

Description of the Need for the Information and its Proposed Use: This regulation prescribes decision making procedures that applicants and grantees in certain Housing programs must comply with before HUD assistance can be used for projects that may affect floodplains and wetlands. Documentation must be kept and maintained by the recipients to document compliance of projects with the Executive Orders.

Form Number: None.

Respondents: State, Local, or Tribal Government.

Frequency of Submission: Recordkeeping, On Occasion, and Third Party Disclosure.

Reporting Burden:

	Number of Respondents	×	Frequency of Response	×	Hours per Response	=	Burden Hours
Third Party Disclosure	300		1		1		300
Recordkeeping	300		1		8		2,400

Total Estimated Burden Hours: 2,700.

Status: Revision.

Contact: Walter Prybyla, HUD, (202) 708–1201 x4466, Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: November 10, 1997.

[FR Doc. 97–30499 Filed 11–19–97; 8:45 am]

BILLING CODE 4201–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4263–N–55]

Submission for OMB Review: Comment Request

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting comments on the subject proposal.

DATES: Comments due date: December 22, 1997.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Gloria S. Diggs, Acting Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Diggs.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: November 10, 1997.

David S. Cristy,

Director, Information Resources, Management Policy and Management Division.

Notice of Submission of Proposed Information Collection of OMB

Title of Proposal: Mortgagor's Certificate of Actual Cost.

Office: Housing.

OMB Approval Number: 2502–0112.

Description of the Need for the Information and its Proposed use: The mortgagor submits this report certifying actual development cost so that HUD can make a determination of mortgage insurance acceptability and prevent windfall profits. It is also used to provide a base for evaluating housing programs, labor costs, and physical improvements in connection with construction of multifamily housing.

Form Number: HUD–92330.

Respondents: Business or Other For-Profit and Not-For-Profit Institutions.

Frequency of Submission: On Occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD–92330	800		1		8		6,400

Total Estimated Burden Hours: 6,400.

Status: Reinstatement, with changes.

Contact: Jane Curtis-Genevieve A. Tucker, HUD, (202) 708–0624 x2477 Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: November 10, 1997.

[FR Doc. 97–30500 Filed 11–19–97; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT–836342

Applicant: Virus Reference Laboratory, San Antonio, TX.

The applicant requests a permit to import from Canada serum samples taken from captive-held and captive-born western lowland gorilla (*Gorilla gorilla*) and mandrill (*Mandrillus sphinx*) for the purpose of scientific research consistent with the purposes of the Act.

PRT–836387

Applicant: Anthony Pizzella, Marrick, NY.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–836457

Applicant: West Indian Iguana Specialist Group of the Species Survival Commission of the IUCN, San Diego, CA.

The applicant requests a permit for the import of multiple shipments of biological samples from captive-bred, captive-held and wild specimens of endangered *Cyclura* species, world wide. This notification covers activities conducted by the applicant over a period of 5 years.

PRT–836492

Applicant: USFWS Region-5, Migratory Bird Permit Office, Hadley, MA.

The applicant requests a permit to export captive held male and female Golden eagles (*Aquila chrysaetos*) to Fundacion ARA, Nuevo Leon, Mexico, for the purpose of enhancement through propogation.

PRT–836237

Applicant: Randy Miller, Acton, CA.

The applicant requests a permit to export and reimport two captive born leopard (*Panthera pardus*) and progeny of the animals currently held by the applicant and any animals acquired in the United States by the applicant to/from worldwide locations to enhance the survival of the species through conservation education.

This notificatation covers activities conducted by the applicant over a three year period.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

The public is invited to comment on the following application for permits to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR 18).

PRT–836587

Applicant: Taylor Mills, Voorhees, NJ.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Gulf of Boothia polar bear population, Northwest Territories, Canada for personal use.

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: November 14, 1997.

Mary Ellen Amtower,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 97–30452 Filed 11–19–97; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Species Permit Applications

ACTION: Notice of Receipt of Applications.

SUMMARY: The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(a) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*).

Permit No. PRT–834021

Applicant: Timothy Reeves, Farmington, New Mexico

Applicant requests authorization to conduct presence/absence surveys for southwestern willow flycatchers (*Empidonax traillii extimus*) within New Mexico.

Permit No. PRT–834782

Applicant: James A. Tress, Jr., Tucson, Arizona.

Applicant requests authorization to conduct presence/absence surveys for southwestern willow flycatchers (*Empidonax traillii extimus*), cactus ferruginous pygmy-owls (*Glaucidium brasilianum cactorum*), and Mexican spotted owls (*Strix occidentalis lucida*) within New Mexico and Arizona.

Permit No. PRT–835139

Applicant: Gail Garber Place, Hawks Aloft, Inc., Albuquerque, New Mexico.

Applicant requests authorization to conduct presence/absence surveys for southwestern willow flycatchers (*Empidonax traillii extimus*) within New Mexico.

Permit No. PRT–835118

Applicant: Dr. Robert J. Frye, University of Arizona, Tucson, Arizona.

Applicant requests authorization to collect soil samples along riparian channels possibly containing endangered plant species of Huachuca water umbel (*Lilaeopsis schaffneriana ssp. recurva*) for lab monitoring and to collect live plants in the field.

Permit No. PRT–835414

Applicant: Joseph P. Shannon, Northern Arizona University, Flagstaff, Arizona.

Applicant requests authorization to survey for southwestern willow flycatchers (*Empidonax traillii extimus*), bonytail chub (*Gila elegans*), humpback chub (*Gila cypha*), Colorado squawfish (*Ptychocheilus lucius*), and razorback sucker (*Xyrauchen texanus*) and collect salvage material of these endangered species as part of a monitoring and research program for analysis during the first year to determine if enough taxa are collected to construct a food web.

Permit No. PRT–835678

Applicant: Michael J. Boyles, NPS/Lake Mead National Recreation Area, Boulder City, Nevada.

Applicant requests authorization to conduct presence/absence surveys for Mexican spotted owls (*Strix occidentalis lucida*) in the Lake Mead National Recreation Area.

Permit No. PRT–836196

Applicant: Jeff Williamson, The Phoenix Zoo, Phoenix, Arizona.

Applicant request authorization to obtain for educational display razorback sucker (*Xyrauchen texanus*), bonytail chub (*Gila elegans*), Gila topminnow (*Poeciliopsis occidentalis*), and desert pupfish (*Cyprinodon macularius*).

Permit No. PRT–821577

Applicant: Duane Shroufe, Arizona Department of Game and Fish, Phoenix, Arizona.

Applicant requests authorization to conduct activities for scientific research and recovery purposes for the jaguar (*Panthera onca*) in Arizona.

DATES: Written comments on these permit applications must be received on or before December 22, 1997.

ADDRESSES: Written data or comments should be submitted to the Legal Instruments Examiner, Division of Endangered Species/Permits, Ecological Services, P.O. Box 1306, Albuquerque, New Mexico 87103. Please refer to the respective permit number for each application when submitting comments. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: U.S. Fish and Wildlife Service, Ecological Services, Division of Endangered Species/Permits, P.O. Box 1306, Albuquerque, New Mexico 87103. Please refer to the respective permit number for each application when requesting copies of documents. Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice, to the address above.

Geoffrey L. Haskett,

Acting Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 97–30478 Filed 11–19–97; 8:45 am]

BILLING CODE 4510–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Operation and Maintenance Rate Adjustment: Walker River Irrigation Project, Nevada

ACTION: Notice of Proposed Irrigation Operation and Maintenance (O&M) Rate Adjustment.

SUMMARY: The Bureau of Indian Affairs proposes to change the assessment rates for operating and maintaining the Walker River Irrigation Project for 1998 and subsequent years. The following table illustrates the impact of the rate adjustment:

WALKER RIVER IRRIGATION PROJECT, IRRIGATION RATE PER ASSESSABLE ACRE

[N/A—Not Applicable]

Year	Present 1997	Proposed 1988
Non-Indian	$15.29	N/A
Indian	7.32	N/A
Rate (all)	N/A	$15.29

FOR FURTHER INFORMATION CONTACT: Area Director, Bureau of Indian Affairs, Phoenix Area Office, One North First St., Phoenix, Arizona 85001, telephone number (602) 379–6600.

DATES: Interested parties may submit comments on the proposed rate adjustment. Comments must be submitted on or before December 22, 1997.

ADDRESSES: All comments concerning the proposed rate change must be in writing and addressed to: Director, Office of Trust Responsibilities, Attn: Irrigation and Power, MS–4513–MIB, Code 210, 1849 ''C'' Street, NW, Washington, D.C. 20240, Telephone (202) 208–5480.

SUPPLEMENTARY INFORMATION: The authority to issue this document is vested in the Secretary of the Interior by 5 U.S.C. 301 and the Act of August 14, 1914 (38 Stat. 583, 25 U.S.C. 385). The Secretary has delegated this authority to the Assistant Secretary-Indian Affairs pursuant to Part 209 Departmental Manual, Chapter 8.1A, and memorandum dated January 25, 1994, from Chief of Staff, Department of the Interior, to Assistant Secretaries, and Heads of Bureaus and Offices.

This notice is given in accordance with Section 171.1(e) of part 171, Subchapter H, Chapter 1, of Title 25 of the Code of Federal Regulations, which provides for the fixing and announcing the rates for annual operation and maintenance assessments and related information of the Walker River Irrigation Project for Calendar Year 1998 and subsequent years.

The assessment rates are based on a prepared estimate of the cost of normal operation and maintenance of the irrigation project. Normal operation and maintenance mean the expenses we incur to provide direct support or benefit to the project's activities for administration, operation, maintenance, and rehabilitation. We must include at least:

(a) Personnel salary and benefits for the project engineer/manager and our employees under his management/control;
(b) Materials and supplies;
(c) Major and minor vehicle and equipment repairs;
(d) Equipment, including transportation, fuel, oil, grease, lease and replacement;
(e) Capitalization expenses;
(f) Acquisition expenses, and
(g) Other expenses we determine necessary to properly perform the activities and functions characteristic of an irrigation project.

Payments

The irrigation operation and maintenance assessments become due based on locally established payment requirements. No water will be delivered to any of these lands until all irrigation charges have been paid.

Interest and Penalty Fees

Interest, penalty, and administrative fees will be assessed, where required by law, on all delinquent operation and maintenance assessment charges as prescribed in the Code of Federal Regulations, Title 4, part 102, Federal Claims Collection Standards; and 42 BIAM Supplement 3, part 3.8, Debt Collection Procedures. Beginning 30 days after the due date, interest will be assessed at the rate of the current value of funds to the U.S. Treasury. An administrative fee of $12.50 will be assessed each time an effort is made to collect a delinquent debt, and a penalty charge of six percent per year will be charged on delinquent debts more than 90 days old and will accrue from the date the debt became delinquent. No water will be delivered to any farm unit until all irrigation charges have been paid. After 180 days, a delinquent debt will be forwarded to the United States Treasury for further action in accordance with Debt Collection Improvement Act of 1996 (Pub. L. 104–134).

Dated: October 28, 1997.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 97–30427 Filed 11–19–97; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

[MT–960–1150–00]

District Advisory Council Meeting

AGENCY: Bureau of Land Management, Dakotas District Office, Interior.

ACTION: Notice of meeting.

SUMMARY: A meeting of the Dakotas District Resource Advisory Council will be held January 12 & 13, 1998, at the C & L Cafe, 21 North Main Street, Bowman, North Dakota. The session will convene at noon on January 12th and resume at 8:00 a.m. on the 13th. Agenda items include updates on the South Dakota Land Exchange, Noxious Weed Control Projects, and the transfer of Inspection & Enforcement responsibilities to the states. Election of a Chairperson for 1998 will also be on the agenda.

The meeting is open to the public and a public comment period is set for 8:00 a.m. on January 13th. The public may make oral statements before the Council or file written statements for the Council to consider. Depending on the number of persons wishing to make an oral statement, a per-person time limit may be established. Summary minutes of the meeting will be available for public inspection and copying.

The 12-member Council advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management in the Dakotas.

FOR FURTHER INFORMATION CONTACT: Douglas Burger, District Manager, Dakotas District Office, 2933 3rd Avenue West, Dickinson, ND 58601. Telephone (701) 225–9148.

Dated: November 10, 1997.

Douglas J. Burger,

District Manager.

[FR Doc. 97–30545 Filed 11–19–97; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–1430–01; NVN–61315]

Partial Cancellation of Proposed Withdrawal; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Department of the Army, Corps of Engineers, has filed a request to delete 10 acres from their withdrawal application (N–61315) for flood control facilities in Clark County, Nevada. The original Notice of Proposed Withdrawal was published in the **Federal Register**, 61 FR 63858, December 2, 1996, and segregated the lands described therein from settlement, sale, location, or entry under the general land laws, including the mining laws, subject to valid existing rights. The Corps of Engineers has determined the 10 acres is not needed and can be made available for other uses.

EFFECTIVE DATE: November 20, 1997.

FOR FURTHER INFORMATION CONTACT: Dennis J. Samuelson, BLM Nevada State Office, P.O. Box 12000, Reno, Nevada 89520, 702–785–6532.

SUPPLEMENTARY INFORMATION: The Department of the Army, Los Angeles District, Corps Engineers, has determined that their withdrawal application (**Federal Register**, 61 FR 63858, December 2, 1996) can be canceled insofar as it affects the following described land:

Mount Diablo Meridian

T. 21 S., R. 60 E.,
Sec. 29, SE¼NW¼SE¼.

The area described contains 10 acres in Clark County.

The land described above is hereby made available to the Clark County School District under the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 et seq.). The land will remain closed to mining due to an overlapping segregation.

Dated: November 14, 1997.

William K. Stowers,

Lands Team Lead.

[FR Doc. 97–30479 Filed 11–19–97; 8:45 am]

BILLING CODE 4310–HC–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–403]

Certain Acesulfame Potassium and Blends and Products Containing Same Notice of Investigation

AGENCY: U.S. International Trade Commission

ACTION: Institution of investigation pursuant to 19 U.S.C. § 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on October 16, 1997, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, on behalf of Nutrinova Nutrition Specialties and Food Ingredients GmbH, D—65 926, Frankfurt am Main, Federal Republic of Germany, and Nutrinova Inc., 25 Worlds Fair Drive, Somerset, New Jersey 08873. Supplements to the complaint were filed on October 30 and November 10, 1997. The complaint, as supplemented, alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of

certain acesulfame potassium and blends and products containing same that infringe claims 1, 2, 3, 4, and 5 of U.S. Letters Patent 4,695,629 and claims 1 and 2 of U.S. Letters Patent 4,158,068. The complaint further alleges that there exists an industry in the United States as required by subsection (a)(2) of section 337.

The complainants request that the Commission institute an investigation and, after a hearing, issue a permanent exclusion order and a permanent cease and desist order.

ADDRESSES: The complaint and supplements, except for any confidential information contained therein, are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Room 112, Washington, D.C. 20436, telephone 202–205–2000. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

FOR FURTHER INFORMATION CONTACT: Juan Cockburn, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2572. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov or ftp://ftp.usitc.gov).

Authority

The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 C.F.R. § 210.10 (1997).

Scope of Investigation

Having considered the complaint, the U.S. International Trade Commission, on November 13, 1997, ORDERED THAT

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain acesulfame potassium or blends or products containing same by reason of infringement of claims 1, 2, 3, 4, or 5 of U.S. Letters Patent 4,695,629 or claims 1 or 2 of U.S. Letters Patent 4,158,068, and whether there exists an industry in the United States as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are—

Nutrinova Nutrition Specialties and Food Ingredients GmbH, D—65 926, Frankfurt am Main, Federal Republic of Germany

Nutrinova Inc., 25 Worlds Fair Drive, Somerset, New Jersey 08873

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Hangzhou Sanhe Food Company Ltd., 258 Qiutao Road, Hangzhou, Zheijiang, People's Republic of China

JRS International, Inc., 141 Lanza Avenue, Bldg. 12, Garfield, New Jersey 07026

Dingsheng, Inc., 5323 Tyler Avenue, Temple City, California 91780

WYZ Tech, Inc., 4570 Eucalyptus Ave. #B, Chino, California 91710

(c) Juan Cockburn, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, S.W., Room 401–Q, Washington, D.C. 20436, shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, the Honorable Sidney Harris is designated as the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 C.F.R. § 210.13. Pursuant to 19 C.F.R. §§ 201.16(d) and 210.13(a) of the Commission's Rules, such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against such respondent.

Issued: November 14, 1997.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 97–30547 Filed 11–19–97; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–757 and 759 (Final)]

Collated Roofing Nails from China and Taiwan

Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission determines,[2] pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) (the Act), that an industry in the United States is threatened with material injury by reason of imports from China and Taiwan of collated roofing nails (''CR nails''),[3] provided for in subheading 7317.00.55 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).[4]

Background

The Commission instituted these investigations effective November 26, 1996, following receipt of a petition filed with the Commission and the Department of Commerce by the Paslode Division of Illinois Tool Works, Vernon Hills, IL. The final phase of the investigations was scheduled by the Commission following notification of preliminary determinations by the Department of Commerce that imports of CR nails from China and Taiwan were

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

[2] Commissioner Carol T. Crawford dissenting.

[3] CR nails are roofing nails made of steel, having a length of 1 3/16 inch to 1 13/16 inches (or 20.64 to 46.04 millimeters), a head diameter of 0.330 inch to 0.415 inch (or 8.38 to 10.54 millimeters), and a shank of 0.100 inch to 0.125 inch (or 2.54 to 3.18 millimeters), whether or not galvanized, that are collated with two wires.

[4] The Commission further determines, pursuant to 19 USC § 1673(b)(4)(B), that it would not have found material injury by reason of subject imports but for the suspension of liquidation of the merchandise under investigation.

being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. § 1673b(b)). Notice of the scheduling of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of May 27, 1997 (62 FR 28731). The hearing was held in Washington, DC, on September 30, 1997, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on November 12, 1997. The views of the Commission are contained in USITC Publication 3070 (November 1997), entitled ''Collated Roofing Nails from China and Taiwan: Investigation No. 731–TA–757 and 759 (Final).''

Issued: November 12, 1997.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 97–30502 Filed 11–19–97; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–404]

Certain SDRAMs, DRAMs, ASICs, RAM-and-LOGIC Chips, Microprocessors, Microcontrollers, Processes for Manufacturing Same and Products Containing Same; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. § 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on October 16, 1997, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, on behalf of Samsung Electronics Co., Ltd. of Seoul, Korea and Samsung Austin Semiconductor, L.L.C. of Austin, Texas. A supplementary letter was filed on November 3, 1997. The complaint, as supplemented, alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain SDRAMs, DRAMs, ASICs, RAM-and-Logic chips, microprocessors, microcontrollers, and products containing same by reason of infringement of claims 1, 2, 3, 5, and 6 of U.S. Letters Patent 5,444,026, and claim 1 of U.S. Letters Patent 4,972,373. The complaint further alleges that there exists an industry in the United States as required by subsection (a)(2) of section 337.

The complainants request that the Commission institute an investigation and, after the investigation, issue a permanent exclusion order and a permanent cease and desist order.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Room 112, Washington, D.C. 20436, telephone 202–205–2000. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

FOR FURTHER INFORMATION CONTACT: Thomas S. Fusco, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2571.

Authority

The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR § 210.10 (1997).

Scope of Investigation

Having considered the complaint, the U.S. International Trade Commission, on November 13, 1997, *Ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain SDRAMs, DRAMs, ASICs, RAM-and-Logic chips, microprocessors, microcontrollers, and products containing same by reason of infringement of claims 1, 2, 3, 5, or 6 of U.S. Letters Patent 5,444,026, or claim 1 of U.S. Letters Patent 4,972,373, and whether there exists an industry in the United States as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are—

Samsung Electronics Co., Ltd., Samsung Main Building 250, Taepyung Ro, 2GA, Chung Ku, Seoul, Korea 100–742

Samsung Austin Semiconductor, L.L.C., 12100 Samsung Boulevard, Austin, Texas 78754

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Fujitsu, Ltd., 6–1 Marunouchi, 1-Chome, Chiyoda-ku, Tokyo 100, Japan

Fujitsu Microelectronics, Inc., 3545 North First Street, San Jose, California

(c) Thomas S. Fusco, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW, Room 401–O, Washington, D.C. 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, the Honorable Paul J. Luckern is designated as the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR § 210.13. Pursuant to 19 CFR §§ 201.16(d) and 210.13(a), such responses will be considered by the Commission if received no later than 20 days after the date of service by the Commission of the complaint and notice of investigation. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against such respondent.

By order of the Commission.

Issued: November 14, 1997.

Donna R. Koehnke,

Secretary.

[FR Doc. 97–30548 Filed 11–19–97; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to The Clean Air Act (''CAA'')

Consistent with the policy set forth in the Department of Justice regulations at 28 C.F.R. § 50.7, notice is hereby given that on October 30, 1997, a proposed Consent Decree was lodged with the United States District Court for the Southern District of Indiana, New Albany Division, in *United States* v. *Essroc Cement Corporation* (''ESSROC''), Cause No. NA 97–130–C–H/G, settling claims asserted by the United States, on behalf of the United States Environmental Protection Agency, pursuant to Section 113 of the Clean Air Act, 42 U.S.C. § 9613. The claims arose in connection with operation of ESSROC's portland cement manufacturing facility in Speed, Indiana.

The Consent Decree requires ESSROC to pay $300,000 in civil penalties for alleged violation of the particulate matter and opacity emission limitations and other provisions in the New Source Performance Standards (''NSPS'') for Portland Cement Plants at 40 CFR Part 60, Subpart F and the NSPS General Provisions at 40 C.F.R. Part 60, Subpart A. The Decree also requires compliance with certain NSPS requirements for reporting excess emissions, found at 50 CFR §§ 60.13(h), 60.7(c)(1) and 60.63(d).

The Department of Justice will receive written comments relating to the proposed Consent Decree for thirty (30) days from the date of publication of this notice. Comments should be directed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Essroc Cement Corporation*, DOJ Reference # 90–5–2–1–2090.

The proposed Consent Decree may be examined at the Office of the United States Attorney for the Southern District of Indiana, U.S. Courthouse, 5th Floor, 46 East Ohio Street, Indianapolis, Indiana 46204, at the Region V offices of the Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590, and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library. In requesting a copy, please enclose a check in the amount of $2.25 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Bruck S. Gelber,

Deputy Chief, Environmental Enforcement Section.

[FR Doc. 97–30538 Filed 11–19–97; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)

In accordance with Departmental policy, 28 CFR § 50.7, and with Section 122 of CERCLA, 42 U.S.C. § 9622, notice is hereby given that a consent decree in *United States* v. *National Wood Preservers, Inc. et al.*, Civ. Action No. 96–CV–5269 (E.D. Pa.) was lodged on October 23, 1997 with the United States District Court for the Eastern District of Pennsylvania. The consent decree resolves the claims of the United States under Sections 107(a), and 113(g) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (''CERCLA''), for reimbursement of response costs incurred at the Havertown PCP Superfund Site located in Haverford Township, Delaware County, Pennsylvania and for declaratory judgment as to liability that will be binding in actions to recover further response costs related to the Site. The consent decree obligates Donald Goldstein to reimburse $32,000 of the United States' response costs.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *National Wood Preservers, Inc. et al.*, DOJ Ref. # 90–11–3–1680.

The consent decree may be examined at the office of the United States Attorney, 615 Chestnut Street, Philadelphia, PA; the Region III Office of the Environmental Protection Agency, 841 Chestnut Street, Philadelphia, PA; and at the Consent Decree Library, 1120 G Street, NW 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the CERCLA may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW, 4th Floor, Washington, D.C. 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $6.50 (25 cents per page reproduction cost), payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 97–30539 Filed 11–19–97; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Partial Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on October 30, 1997, a proposed partial consent decree in *United States* v. *North American Group Ltd., et al.*, Civil Action No. 3:97–CV–191–H was lodged with the United States District Court for the Western District of North Carolina.

The partial consent decree resolves claims under 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9607(a), as amended, against The North American Group Ltd., North American Environmental Corp., Federal Environmental Services, Federal Services, M.D. Babcock, Speer Mabry IV and Mark Odum, for response costs that were incurred by the United States Environmental Protection Agency in connection with the release and threatened release of hazardous substances at the Cherokee Site (''Site'') in Charlotte, North Carolina.

The proposed consent decree provides that the aforementioned settling defendants will pay $400,000 according to a payment schedule set forth in the partial consent decree. The proposed consent decree also requires the settling defendants to pay $15,000 as a civil penalty for violating Section 104(e)(5) of CERCLA, 42 U.S.C. § 9604(e)(5), for failing to comply with two information requests issued by EPA.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the partial consent decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *North American Group Ltd., et. al.* D.J. Ref. 90–11–2–1173

The partial consent decree may be examined at the Office of the United States Attorney, Suite 1700 Carillon Building, 227 West Trade St., Charlotte,

North Carolina, at U.S. EPA Region IV, 61 Forsythe St., N.E., Atlanta, GA 30303, and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the partial consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. When requesting a copy, please enclose a check in the amount of $9.00 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Joel Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 97–30540 Filed 11–19–97; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Settlement Agreement Pursuant to the Comprehensive Environmental Response Compensation, and Liability Act

In accordance with Departmental policy, 28 C.F.R. § 50.7, notice is hereby given that a proposed Settlement Agreement in *In re: The Railway Reorganization Estate, Inc. F/K/A The Delaware and Hudson Railway Co.*, Case No. 88–342, was lodged on October 27, 1997 in the United States Bankruptcy Court for the District of Delaware.

The Settlement Agreement resolves the United States' claim, pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9607, for response costs incurred and to be incurred by EPA at the Quanta Resources Syracuse Superfund Site (''the Site'') in Syracuse, New York. Under the Settlement Agreement, which remains subject to Bankruptcy Court approval, the United States will receive $15,000 in reimbursement of response costs incurred and to be incurred by EPA at the Site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Settlement Agreement. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *In re: The Railway Reorganization Estate, Inc., F/K/A The Delaware and Hudson Railway Co., DOJ Ref.* #90–11–3–848E.

The proposed Settlement Agreement may be examined at the Office of the United States Attorney in Wilmington, Delaware, the Region II Office of the Environmental Protection Agency, 290 Broadway, New York, New York; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library. In requesting a copy please refer to the referenced case and enclose a check made payable to the Consent Decree Library in the amount of $2.25 (25 cents per page reproduction costs).

Bruce S. Gelber,

Deputy Section Chief, Environmental Enforcement Section, Environmental and Natural Resources Division, U.S. Department of Justice.

[FR Doc. 97–30541 Filed 11–19–97; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993; Advanced Lead-Acid Battery Consortium

Notice is hereby given that, on October 16, 1997, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* (''the Act''), the Advanced Lead-Acid Battery Consortium (''ALABC''), a program of International Lead Zinc Research Organization, Inc., filed written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notification was filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Amara Raja Batteries, Ltd., Tiiupati AP, INDIA, has made a commitment to the Consortium. C&D Charter Power Systems, Inc., Conshohocken, PA, has changed its name to C&D Technologies.

No other changes have been made in either the membership or planned activity of the Consortium. Membership in the Consortium remains open and ALABC intends to file additional written notification disclosing any future changes in membership.

On June 15, 1992, the ALABC filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on July 29, 1992, 57 FR 33522. The last notification was filed with the Department on July 24, 1997. A notice was published in the **Federal Register** on September 10, 1997, 62 FR 47689.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 97–30535 Filed 11–19–97; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 97–13]

Vincent A. Piccone, M.D.; Revocation of Registration

On February 25, 1997, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Vincent A. Piccone, M.D., (Respondent), of Staten Island, New York, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration AP3110765, and deny any pending applications for renewal of such registration as a practitioner pursuant to 21 U.S.C. 823(f) and 824(a)(3), for reason that he is not currently authorized to handle controlled substances in the State of New York.

By letter dated March 14, 1997, Respondent, through counsel, timely filed a request for a hearing, and the matter was docketed before Administrative Law Judge Gail A. Randall. On March 25, 1997, the Government filed a Motion for Summary Disposition, alleging that effective September 18, 1995, the Administrative Review Board of the State of New York, Department of Health, State Board for Professional Medical Conduct (Board), sustained the decision of the Board's Hearing Committee to revoke Respondent's license to practice medicine in the State of New York, and therefore, Respondent is not currently authorized to handle controlled substances in the State of New York.

On March 25, 1997, Judge Randall issued a Memorandum and Order providing Respondent with an opportunity to respond to the Government's motion and ordering that the filing of prehearing statements be held in abeyance until there is a resolution of the Government's motion. Respondent's counsel submitted a letter dated April 25, 1997, requesting a stay of the proceedings, ''until I have had the opportunity to inspect the record in this case pursuant to 21 CFR 1301.46.'' Respondent's counsel further asserted

that, ''[i]n preparing my response to the pending motion, it has become evident to me that I do not have certain documents.'' On April 30, 1997, the Government submitted its Response to Respondent's Request for a Stay, arguing that Respondent already has copies of all of the documents that make up the record in this proceeding, and that ''neither the Administrative Procedures Act nor DEA regulations provide for Respondent's prehearing discovery or examination of DEA investigative materials.'' The Government requested that Respondent's request for a stay be denied. Thereafter, on May 1, 1997, Judge Randall issued her Memorandum and Order agreeing with the Government's position and denying Respondent's request for a stay of the proceedings. Respondent was given until May 9, 1997, to respond to the Government's Motion for Summary Disposition.

Subsequently, Respondent submitted its Opposition to Government's Motion for Summary Disposition dated May 10, 1997, arguing that ''the issue of fact remains that the Respondent's licenses were NOT revoked in the States of Pennsylvania and New Jersey after recent hearings resulting from the New York revocation.'' Respondent contended that ''[t]he government bears the burden of proof to address the status of the Respondent's medical licensure nationally and then apply the applicable DEA regulations and has failed to do so.'' Accordingly, Respondent requested that the Government's motion be denied.

On May 13, 1997, Judge Randall issued her Memorandum and Order denying the Government's Motion for Summary Disposition. Judge Randall found that there is no dispute that Respondent is not currently authorized to handle controlled substances in the State of New York. The Administrative Law Judge concluded that DEA does not have the statutory authority to maintain a registration, if the registrant is without authorization to handle controlled substances in the state in which he practices. However, Respondent does maintain state licensure in Pennsylvania and New Jersey, and there was nothing before the Administrative Law Judge that asserted the location on the DEA Certificate of Registration in dispute. Consequently, Judge Randall found that ''there is a genuine issue of material fact, and this matter currently is not appropriate for summary disposition.''

Judge Randall then issued an Order for Prehearing Statements, and on May 14, 1997, the Government filed its prehearing statement. Respondent was given until June 25, 1997, to file his prehearing statement. In her Order for Prehearing Statements, the Administrative Law Judge cautioned Respondent ''that failure to file timely a prehearing statement as directed above may be considered a waiver of hearing and an implied withdrawal of a request for hearing.'' On August 4, 1997, Judge Randall issued an Order indicating that she had not yet received a prehearing statement from Respondent; reminding Respondent that failure to timely file a prehearing statement from Respondent; reminding Respondent that failure to timely file a prehearing statement may be deemed a waiver of hearing; and giving Respondent until August 20, 1997, to file such a statement along with a motion for late acceptance.

On August 27, 1997, the Administrative Law Judge issued an Order Terminating Proceedings, finding that Respondent has failed to file a prehearing statement, and therefore concluding that Respondent has waived his right to a hearing. Judge Randall noted that the record would be transmitted to the Acting Deputy Administrator for entry of a final order based upon the investigative file. Therefore, the Acting Deputy Administrator, finding that Respondent has waived his right to a hearing, hereby enters his final order without a hearing and based upon the investigative file, pursuant to 21 CFR 1301.43(e) and 1301.46.

The Acting Deputy Administrator finds that Respondent currently possesses DEA Certificate of Registration AP3110765 in Schedules II through V issued to him at an address in Staten Island, New York. One June 7, 1995, the Hearing Committee on the Board ordered the revocation of Respondent's license to practice medicine in the State of New York based upon a finding that Respondent practiced the medical profession while impaired by mental disability from approximately 1986 through 1994, and a finding that Respondent has a psychiatric condition which impairs his ability to practice the medical profession. In a Decision and Order effective September 18, 1995, the Board's Administrative Review Board sustained the Hearing Committee's findings and revocation of Respondent's New York medical license.

The Acting Deputy Administrator finds that in light of the fact that Respondent is not currently licensed to practice medicine in the State of New York, it is reasonable to infer that he is not currently authorized to handle controlled substances in that state. Respondent does not dispute that he is not currently authorized to practice medicine or handle controlled substances in the State of New York.

The DEA does not have statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he conducts his business. 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. See Romeo J. Perez, M.D. 62 Fed. Reg. 16,193 (1997); Demetris A. Green, M.D., 61 Fed. Reg. 60,728 (1996); Dominick A. Ricci, M.D., 58 Fed. Reg. 51,104 (1993).

Here it is clear that Respondent is not currently authorized to handle controlled substances in the State of New York, the state where he is registered with DEA. Therefore, Respondent is not entitled to a DEA registration in that state.

Respondent has argued that he is licensed to practice medicine in Pennsylvania and New Jersey. However, the Acting Deputy Administrator concludes that the fact that Respondent is licensed to practice medicine in states other than New York is irrelevant since he is not authorized to practice in the state where he is registered with DEA and he has not sought to modify his current registration to another state.

Accordingly, the Acting Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration AP3110765, previously issued to Vincent A. Piccone, M.D., be, and it hereby is, revoked. The Acting Deputy Administrator further orders that any pending applications for the renewal of such registration, be, and they hereby are, denied. This order is effective December 22, 1997.

Dated: November 13, 1997.

James S. Milford,

Acting Deputy Administrator.

[FR Doc. 97–30592 Filed 11–19–97; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Office of the Secretary

Bureau of International Labor Affairs, U.S. National Administrative Office: North American Agreement on Labor Cooperation; Notice of Determination Regarding Review of Submission #9702

AGENCY: Office of the Secretary, Labor.

ACTION: Notice.

SUMMARY: The U.S. National Administrative Office (NAO) gives notice that on November 17, 1997, Submission #9702 was accepted for review. The submission was filed with the NAO on October 30, 1997, by the Support Committee for Maquiladora Workers (SCMW), the International Labor Rights Fund (ILRF), the National Association of Democratic Lawyers of Mexico (ANAD), and the Union of Metal, Steel, Iron, and Allied Workers (Sindicato de Trabajadores de la Industria Metálica, Acero, Hierro, Conexos y Similares—STIMAHCS) of Mexico and raises issues of freedom of association involving workers at an export processing (maquiladora) plant.

Article 16(3) of the North American Agreement on Labor Cooperation (NAALC) provides for the review of labor law matters in Canada and Mexico by the NAO. The objectives of the review of the submission will be to gather information to assist the NAO to better understand and publicly report on the Government of Mexico's compliance with the obligations set forth in Articles 3 and 5 of the NAALC.

EFFECTIVE DATE: November 17, 1997.

FOR FURTHER INFORMATION CONTACT: Irasema T. Garza, Secretary, U.S. National Administrative Office, Department of Labor, 200 Constitution Avenue, N.W., Room C–4327, Washington, D.C. 20210. Telephone: (202) 501–6653 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: On October 30, 1997, SCMW, ILRF, ANAD and STIMAHCS filed a submission with the NAO concerning allegations involving freedom of association among workers at an export processing (maquiladora) plant. The submission contains information alleging that workers at the Han Young maquiladora plant in Tijuana, Baja California, Mexico, were harassed and intimidated because of their support for an independent union. It is also alleged that several union supporters were fired and one was physically attacked by the plant manager. Finally, the submission alleges that the local Conciliation and Arbitration Board (CAB) failed to enforce the appropriate provisions of the Mexican labor law.

The submission maintains that Mexico is in violation of NAALC Article 5(4) in failing to ensure that its labor tribunal proceedings are impartial and independent and do not have a substantial interest in the outcome of the matter; Article 5(1) in failing to ensure that such proceedings are fair, equitable and transparent; Article 5(1)(d) in failing to ensure that such proceedings are not unnecessarily complicated and do not entail unwarranted delays; Article 5(2)(b) in failing to ensure that final decisions in labor proceedings are made available without undue delay; and 3(1)(g) in failing to enforce its labor laws protecting workers' rights through appropriate actions.

The submission asserts that Mexico has failed to enforce its labor laws regarding freedom of association, occupational safety and health, wages, payment of wages, seniority, and profit sharing as well as the Mexican Constitution which guarantees freedom of association. Finally, the submission alleges that Mexico is in violation of Convention 87 of the International Labor Organization (ILO) on freedom of association, which Mexico has ratified, and ILO Convention 98 on freedom of association and collective bargaining, which Mexico has not ratified but is nevertheless bound by as a member of the ILO.

Article 16(3) of the NAALC provides for the review of labor law matters in Canada and Mexico by the NAO.

The procedural guidelines for the NAO, published in the **Federal Register** on April 7, 1994, 59 Fed. Reg. 16660, specify that, in general, the Secretary of the NAO shall accept a submission for review if it raises issues relevant to labor law matters in Canada or Mexico and if a review would further the objectives of the NAALC.

Submission #9702 relates to labor law matters in Mexico. A review would appear to further the objectives of the NAALC, as set out in Article 1 of the NAALC, among them freedom of association; promoting compliance with and effective enforcement by each Party of, its labor law; and fostering transparency in the administration of labor law. Accordingly, this submission has been accepted for review of the allegations raised therein. The NAO's decision is not intended to indicate any determination as to the validity or accuracy of the allegations contained in the submission.

The objectives of the review will be to gather information to assist the NAO to better understand and publicly report on the right to organize and freedom of association raised in the submission, including the Government of Mexico's compliance with the obligations agreed to under Articles 3 and 5 of the NAALC. The review will be completed, and a public report issued, within 120 days, or 180 days if circumstances require an extension of time, as set out in the procedural guidelines of the NAO.

Signed at Washington, D.C. on November 17, 1997.

Lewis Karesh,

Deputy Secretary, U.S. National Administrative Office.

[FR Doc. 97–30491 Filed 11–19–97; 8:45 am]

BILLING CODE 4510–28–M

NATIONAL COUNCIL ON DISABILITY

Privacy Act; System of Records.

AGENCY: National Council on Disability.

ACTION: Notice of request for comments.

SUMMARY: In accordance with the Privacy Act (% U.S.C. 552a(e)(11)), the National Council on Disability is issuing notice of our intent to amend the system of records entitled the National Payroll Center to include a new routine use. The disclosure is required by the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA, Pub. L. 104–193). We invite public comment on this publication.

DATES: Persons wishing to comment on the proposed routine use must do so by December 10, 1997.

ADDRESSES: Interested individuals may comment on this publication by writing to the National Council on Disability, 1331 F Street, NW, Suite 1050, Washington, DC 20004; 202–272–2022 (fax); ebriggs@ncd.gov (e-mail). All comments received will be available for public inspection at that address.

FOR FURTHER INFORMATION CONTACT: Ethel D. Briggs, Executive Director, National Council on Disability, 1331 F Street NW, Suite 1050, Washington, D.C. 20004–1107; 202–272–2004 (Voice); 202–272–2074 (TTY); 202–272–2022 (Fax); ebriggs@ncd.gov (e-mail).

SUPPLEMENTARY INFORMATION: Pursuant to Public Law 104–93, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, the National Council on Disability will disclose data from its National Payroll Center system of records to the Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services for use in the National Database of New Hires, part of the Federal Parent Locator Service (FPLS) and Federal Tax Offset System, DHHS/OSCE No. 09–90–0074. A description of the Federal Parent Locator Service may be found at 62 FR 51663 (October 2, 1997).

FPLS is a computerized network through which States may request location information from Federal and State agencies to find non-custodial parents and their employers for purposes of establishing paternity and

securing support. On October 1, 1997, the FPLS was expanded to include the National Director of New Hires, a database containing employment information on employees recently hired, quarterly wage data on private and public sector employees, and information on unemployment compensation benefits. On October 1, 1998, the FPLS will be expanded further to include a Federal Case Registry. The Federal Case Registry will contain abstracts on all participants involved in child support enforcement cases. When the Federal Case Registry is instituted, its files will be matched on an ongoing basis against the files in the National Director of New Hires to determine if an employee is a participant in a child support case anywhere in the country. If the FPLS identifies a person as being a participant in a State child support case, that State will be notified. State requests to the FPLS for location information will also continue to be processed after October 1, 1998.

When individuals are hired by the National Council on Disability, we may disclose to the FPLS their names, social security numbers, home addresses, dates of birth, dates of hire, and information identifying us as the employer. We also may disclose to FPLS names, social security numbers, and quarterly earnings of each National Council on Disability employee, within one month of the end of the quarterly reporting period.

Information submitted by the National Council on Disability to the FPLS will be disclosed by the Office of Child Support Enforcement to the Social Security Administration for verification to ensure that the social security number provided is correct. The data disclosed by the National Council on Disability to the FPLS will also be disclosed by the Office of Child Support Enforcement to the Secretary of the Treasury for use in verifying claims for the advance payment of the earned income tax credit or to verify a claim of employment on a tax return.

Accordingly, the National Council on Disability system notice is further amended by addition of the following routine use:

Routine Uses of Records Maintained in the System, Including Categories of Users and the Purposes of Such Uses

The names, social security numbers, home addresses, dates of birth, dates of hire, quarterly earnings, employer identifying information, and State of hire of employees may be disclosed to the Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services for the purpose of locating individuals to establish paternity, establishing and modifying orders of child support, identifying sources of income, and for other child support enforcement actions as required by the Personal Responsibility and Work Opportunity Reconciliation Act (Welfare Reform Law, Pub. L. 104–193).

Signed in Washington, DC, on November 12, 1997.

Ethel D. Briggs,

Executive Director.

[FR Doc. 97–30470 Filed 11–19–97; 8:45 am]

BILLING CODE 6820–MA–M

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act Meetings

TIME AND DATE: 10:00 a.m., Monday, November 24, 1997.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Requests from Three (3) Federal Credit Unions to Convert to a Community Charter.
2. Request from a Federal Credit Union for a Charter and Insurance Conversion.
3. Requests from Two (2) Credit Unions to Merge and Convert Insurance.
4. Extension of Regulation Effective Date: Part 704, NCUA's Rules and Regulations, Corporate Credit Unions.
5. Notice of Proposed Rule and Request for Comments: Part 708a, Appendix A, NCUA's Rules and Regulations, Mergers or Conversions of Federally Insured Credit Unions to Non-Credit Union Status.
6. Notice of Proposed Rule and Request for Comments: Part 708b, Subpart C, NCUA's Rules and Regulations, Mergers of Federally Insured Credit Unions; Voluntary Termination or Conversion of Insured Status.
7. Proposed National Small Credit Union Development Program.
8. NCUA's 1998/1999 Operating Budget.

RECESS: 12:30 p.m.

TIME AND DATE: 1:00 p.m., Monday, November 24, 1997.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Administrative Action under Sections 116, 206 and 208 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii) and (9)(B).
2. Administrative Action under Section 206 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii) and (9)(B).
3. Administrative Action under Section 206 of the Federal Credit Union Act. Closed pursuant to exemptions (5), (7), (8) and (10).
4. Two (2) Administrative Actions under Part 704 of NCUA's Rules and Regulations. Closed pursuant to exemption (8).
5. One (1) Personnel Action. Closed pursuant to exemptions (2) and (6).
6. Delegations of Authority. Closed pursuant to exemptions (2) and (6).
7. Final Rule: Amendments to Part 790.2(b)(7), NCUA's Rules and Regulations. Closed pursuant to exemptions (2) and (6).
8. Final Rule: Amendments to Part 791, including 791.4, 791.5, and 791.6, NCUA's Rules and Regulations. Closed pursuant to exemptions (2) and (6).

FOR FURTHER INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (703) 518–6304.

Becky Baker,

Secretary of the Board,

[FR Doc. 97–30578 Filed 11–17–97; 4:31 pm]

BILLING CODE 7535–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Advanced Scientific Computing; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Advanced Scientific computing (#1185).

Date and Time: December 12, 1997, 8:30 am to 5:00 pm.

Place: National Science Foundation, 4201 Wilson Boulevard, Suite 1105.17, Arlington, VA.

Type of Meeting: Closed.

Contact Person: Dr. John Van Rosendale, Program Director, New Technologies Program, Suite 1122, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, (703) 306–1962.

Purpose of Meeting: To provide recommendations and advice concerning proposals submitted to NSF for financial support.

Agenda: Panel review of the new Technologies Program proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a

proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the government in the Sunshine Act.

Dated: November 17, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–30515 Filed 11–19–97; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

National Emphasis Panel in Human Resource Development; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name and Committee Code: Special Emphasis Panel in Human Resource Development (#1199).

Date and Time: December 11–12, 1997: 8:00 a.m. to 5:00 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 390, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. A. James Hicks, Program Director, Human Resource Development Division, Room 815, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230 Telephone: (703) 306–1632.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate the Alliances for Minority Participation proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: November 17, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–30516 Filed 11–19–97; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Meeting Notice

In accordance with the purposes of Sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on December 3–6, 1997, in Conference Room T–2B3, 11545 Rockville Pike, Rockville, Maryland. The date of this meeting was previously published in the **Federal Register** on Thursday, January 23, 1997 (62 FR 3539).

Wednesday, December 3, 1997

1:00 P.M.–1:15 P.M.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding conduct of the meeting and comment briefly regarding items of current interest. During this session, the Committee will discuss priorities for preparation of ACRS reports.

1:15 P.M.–2:15 P.M.: Emergency Core Cooling System Strainer Blockage (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the staff's Safety Evaluation Report on the BWR Owners Group Utility Resolution Guidance for emergency core cooling system suction strainer blockage, and related matters.

2:15 P.M.–3:15 P.M.: Assurance of Sufficient Net Positive Suction Head for Emergency Core Cooling and Containment Heat Removal Pumps (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the ACRS concerns associated with the proposed final Generic Letter on Assurance of Sufficient Net Positive Suction Head for Emergency Core Cooling and Containment Heat Removal Pumps.

3:30 P.M.–4:30 P.M.: NRC Performance Plan (Open)—The Committee will hear presentations by and hold discussions with the Chief Financial Officer and a representative of the Office of the Executive Director for Operations regarding the NRC's Performance Plan.

4:30 P.M.–5:30 P.M.: ACRS Report to Congress on the NRC Safety Research Program (Open)—The Committee will hold discussions with the NRC staff, as needed, regarding the NRC Safety Research Program. The Committee will also discuss a proposed ACRS report to Congress on the NRC Safety Research Program.

5:30 P.M.–7:00 P.M.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports on matters considered during this meeting.

Thursday, December 4, 1997

8:30 A.M.–8:35 A.M.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding conduct of the meeting.

8:35 A.M.–10:15 A.M.: Proposed Revisions to 10 CFR 50.59, Changes, Tests, and Experiments (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding proposed revisions to 10 CFR 50.59 and related matters.

10:30 A.M.–11:30 A.M.: Proposed Generic Letter on Interim Guidance for Updating Final Safety Analysis Reports (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the proposed Generic Letter on Interim Guidance for Updating Final Safety Analysis Reports.

1:00 P.M.–2:00 P.M.: Meeting with Commissioner Dicus (Open)—The Committee will meet with NRC Commissioner Dicus to discuss items of mutual interest, including NRC Safety Research Program, Use of PRA in the Regulatory Decisionmaking Process, Elevation of core damage frequency to a fundamental Safety Goal, and Health Effects of Low Levels of Ionizing Radiation.

2:00 P.M.–3:00 P.M.: Proposed Final Revision 1 to NUREG–1022, ''Event Reporting Guidelines, 10 CFR 50.72 and 50.73'' (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding proposed final revision to NUREG–1022.

3:15 P.M.–7:00 P.M.: Preparation of ACRS Reports (Open)—The Committee will continue its discussion of proposed ACRS reports on matters considered during this meeting.

Friday, December 5, 1997

8:30 A.M.–8:35 A.M.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding conduct of the meeting.

8:35 A.M.–10:00 A.M.: Proposed Final Standard Review Plan (SRP) Chapter 19 and Regulatory Guide DG–1061 for Risk-Informed, Performance-Based Regulation, Including Use of Uncertainty Versus Point Values in the PRA-Related Decisionmaking Process (Open)—The Committee will hear presentations by and hold

discussions with representatives of the NRC staff regarding proposed final SRP Chapter 19, Regulatory Guide DG–1061, and use of uncertainty versus point values in the PRA-related decisionmaking process.

10:15 A.M.–12:00 Noon: Operating Events at Oconee Nuclear Power Plant Units 1 and 2 (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the results of the investigation performed by an Augmented Inspection Team (AIT) of the June 20 and 23 event at Oconee Unit 1 involving failure of emergency electrical power supply, and of the April 22, 1997 event at Oconee Unit 2 that involved inoperability of the high pressure injection pump.

1:00 P.M.–3:00 P.M.: Capability and Application of the EPRI Checkworks Code (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and Electric Power Research Institute (EPRI) regarding the capability and application of the EPRI Checkworks Code.

3:15 P.M.–3:45 P.M.: Future ACRS Activities (Open)—The Committee will discuss the recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the full Committee during future meetings.

3:45 P.M.–4:00 P.M.: Reconciliation of ACRS Comments and Recommendations (Open)—The Committee will discuss responses from the NRC Executive Director for Operations (EDO) to comments and recommendations included in recent ACRS reports, including the EDO response to the October 10, 1997 ACRS report related to the differing professional opinion pertaining to steam generator tube integrity.

4:00 P.M.–4:15 P.M.: Election of ACRS Officers For CY 1998 (Open)—The Committee will elect the Chairman and Vice Chairman for the ACRS, and Member-at-Large for the Planning and Procedures Subcommittee for CY 1998.

4:15 P.M.–7:00 P.M.: Preparation of ACRS Reports (Open)—The Committee will continue its discussion of proposed ACRS reports on matters considered during this meeting.

Saturday, December 6, 1997

8:30 A.M.–9:00 A.M.: Report of the Planning and Procedures Subcommittee (Open/Closed)—The Committee will hear a report of the Planning and Procedures Subcommittee on matters related to the conduct of ACRS business, qualifications of candidates nominated for appointment to the ACRS, agenda for the planning meeting, and organizational and personnel matters relating to the ACRS.

[Note: A portion of this session may be closed to discuss organizational and personnel matters that relate solely to the internal personnel rules and practices of this Advisory Committee, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.]

9:00 A.M.–4:00 P.M. (12:00–1:00 P.M. Lunch): Preparation of ACRS Reports (Open)—The Committee will continue its discussion of proposed ACRS reports on matters considered during this meeting.

4:00 P.M.–4:30 P.M.: Miscellaneous (Open)—The Committee will discuss matters related to the conduct of Committee activities and matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on September 4, 1997 (62 FR 46782). In accordance with these procedures, oral or written views may be presented by members of the public, including representatives of the nuclear industry, electronic recordings will be permitted only during the open portions of the meeting, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify Mr. Sam Duraiswamy, Chief, Nuclear Reactors Branch, at least five days before the meeting, if possible, so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by contacting the Chief of the Nuclear Reactors Branch prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the Chief of the Nuclear Reactors Branch if such rescheduling would result in major inconvenience.

In accordance with Subsection 10(d) P.L. 92–463, I have determined that it is necessary to close portions of this meeting noted above to discuss matters that relate solely to the internal personnel rules and practices of this Advisory Committee per 5 U.S.C. 552b(c)(2) and to discuss information the release of which would constitute a clearly unwarranted invasion of personal privacy per 5 U.S.C. 552b(c)(6).

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor, can be obtained by contacting Mr. Sam Duraiswamy, Chief, Nuclear Reactors Branch (telephone 301/415–7364), between 7:30 A.M. and 4:15 P.M. EST.

ACRS meeting agenda, meeting transcripts, and letter reports are available for downloading or reviewing on the internet at http://www.nrc.gov/ACRSACNW.

The ACRS meeting dates for Calendar Year 1998 are provided below:

ACRS Meeting No.	1998 ACRS Meeting Date
	Jan.—No Meeting.
448	Feb. 5–7, 1998.
449	Mar. 2–4, 1998.
450	Mar. 5–7, 1998. (Safety Research Program)
451	Apr. 2–4, 1998.
452	Apr. 30–May 2, 1998.
453	June 3–5, 1998.
454	July 8–10, 1998.
	Aug.—No Meeting.
455	Sept. 2–4, 1998.
456	Oct. 1–3, 1998.
457	Nov. 5–7, 1998.
458	Dec. 3–5, 1998.

Dated: November 14, 1997.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 97–30526 Filed 11–19–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

ENVIRONMENTAL PROTECTION AGENCY

Joint NRC/EPA Guidance on Testing Requirements for Mixed Radioactive and Hazardous Waste

AGENCIES: Environmental Protection Agency and Nuclear Regulatory Commission.

ACTION: Publication of Final Joint Guidance on the Testing Requirements for Mixed Waste.

SUMMARY: The Nuclear Regulatory Commission (NRC) and the Environmental Protection Agency (EPA) are jointly publishing herein final guidance on the testing requirements for mixed radioactive and hazardous waste (mixed waste). NRC and EPA began development of this guidance in 1987 and a draft was completed in 1989. EPA's adoption of the Toxicity Characteristic Leaching Procedure (TCLP) in 1990 required the agencies to substantially revise the guidance. The agencies issued a draft for public comment on March 26, 1992. A public meeting was held on April 14, 1992, in Washington, D.C., to solicit oral comments on the draft guidance document. The comment period ended on May 26, 1992. NRC and EPA received more than 700 requests for copies of the draft guidance document and NRC received approximately 100 written comments from 20 individuals and groups, including comments resulting from a review of the guidance by the U.S. Department of Energy. NRC and EPA staffs have incorporated the appropriate comments into the final guidance.

The guidance emphasizes the use of process knowledge, whenever possible, to determine if a waste is hazardous as a way to avoid unnecessary exposures to radioactivity. The guidance also provides guidelines for generators wishing to rely on process knowledge as the basis for evaluating their waste.

The guidance offers two strategies for helping to maintain radiation exposures As Low As is Reasonably Achievable (ALARA) if testing is required. These strategies are the use of a sample size of less than 100 grams, as long as the resulting test is sufficiently sensitive to measure the constituents of interest at the regulatory levels prescribed in the TCLP, and the use of surrogate materials, as long as they are chemically identical to the mixed waste and faithfully represent the hazardous constituents in the waste mixture.

The guidance also discusses other allowable sampling and testing procedures, such as representative drum sampling, or sampling from drums containing lower concentrations of radioactive material, as long as the chemical contents are identical to those found in the drums with higher concentrations of radioactive material.

FOR FURTHER INFORMATION CONTACT: Dominick A. Orlando, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, D.C., 20555, telephone (301) 415–6749 or Newman Smith, Permits and State Programs Division, Office of Solid Waste, U.S. Environmental Protection Agency, Washington, D.C., 20460, telephone (703) 308–8757.

Dated at Rockville, MD and Washington, DC this 7th day of November, 1997.

For the U.S. Nuclear Regulatory Commission.

Carl J. Paperiello,

Director, Office of Nuclear Material Safety and Safeguards.

For the U.S. Environmental Protection Agency.

Elizabeth Cotsworth,

Acting Director, Office of Solid Waste.

SUPPLEMENTARY INFORMATION:

Clarification of RCRA Hazardous Waste Testing Requirements for Low-Level Radioactive Mixed Waste—Final Guidance

Disclaimer: The policies discussed in this document are not final Agency actions, but are intended solely as guidance. They are not intended, nor can they be relied upon, to create any rights enforceable by any party in litigation with the United States. The Environmental Protection Agency and Nuclear Regulatory Commission may follow the guidance, or act at variance with the guidance, based on an analysis of specific site circumstances. The agencies also reserve the right to change the guidance at any time, without public notice.

ACRONYMS/ABBREVIATIONS USED IN THIS GUIDANCE

Acronym/abbreviation	Definition
AEA	Atomic Energy Act.
ALARA	As Low As Is Reasonably Achievable.
BDAT	Best Demonstrated Available Technology.
CFR	Code of Federal Regulations.
EP	Extraction Procedure (toxicity test).
EPA	Environmental Protection Agency.
FR	Federal Register.
HSWA ..	Hazardous and Solid Waste Amendments.
LDR	Land Disposal Restrictions.
NRC	Nuclear Regulatory Commission.
OSWER	Office of Solid Waste and Emergency Response.
RCRA ...	Resource Conservation and Recovery Act.
SW–846	Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods.
TC	Toxicity Characteristic.
TCLP	Toxicity Characteristic Leaching Procedure.
TSDF	Treatment, Storage or Disposal Facility.
WAP	Waste Analysis Plan.

I. Background

Mixed waste is defined as waste that contains both hazardous waste subject to the requirements of the Resource Conservation and Recovery Act (RCRA) and source, special nuclear, or by-product material subject to the requirements of the Atomic Energy Act (AEA).[1] This guidance addresses testing activities related to mixed low-level waste (LLW), which is a subset of mixed waste.[2] The term ''mixed waste,'' for the purposes of this document, will refer to mixed LLW. Additional information on the testing of hazardous wastes, which could apply to both mixed LLW and other types of mixed waste (e.g., high-level and transuranic mixed waste), is found in Appendix A. The information below is intended for use by Nuclear Regulatory Commission (NRC) licensees that may not be familiar with the hazardous waste characterization and testing requirements that apply to mixed waste. The guidance assumes that the reader is familiar with the NRC's regulations and regulatory framework for the management of radioactive material and focuses on compliance with the Environmental Protection Agency's (EPA's) requirements for the management of hazardous waste. Although it is written for commercial mixed waste generators, the guidance may also be useful for Federal facilities that generate mixed waste.

Users of this guidance should have a good understanding of how mixed waste is defined (see above), and what authority, or authorities, regulate mixed waste testing activities. The hazardous component of mixed waste is regulated by EPA in those States where EPA implements the entire RCRA Subtitle C hazardous waste program (i.e., unauthorized States). Currently, EPA regulates mixed waste in Alaska, Hawaii, Iowa, Puerto Rico, the Virgin Islands, and American Samoa. In most instances mixed waste is regulated by State governments. Thirty-nine States and one territory (Guam) have been delegated authority by EPA to implement the base RCRA hazardous waste program and to regulate mixed waste activities (see 51 *FR* 24504, July 3, 1986, and Appendix B). These States are referred to as ''mixed waste authorized States.'' Nine additional States are authorized for the RCRA base hazardous waste program but have not been delegated authority by EPA to

[1] See 42 U S.C. § 6903 (41), added by the Federal Facility Compliance Act of 1992 (FFCA).

[2] See revised *Guidance on the Definition and Identification of Commercial Low-Level Radioactive and Hazardous Waste and Answers to Anticipated Questions*, October 4, 1989.

regulate mixed waste.[3] In these States mixed waste is not regulated by EPA, but may be regulated by States under the authority of State law. It is important that licensees contact the State hazardous waste agencies in authorized States to determine the specific testing, analysis, and other hazardous waste requirements that may apply to mixed waste managed in their State, because their State may have more stringent requirements than the Federal requirements discussed in this guidance.

This guidance describes:

(1) The current regulatory requirements for determining if a waste is a RCRA hazardous waste;

(2) The role of waste knowledge for hazardous waste determinations;

(3) The waste analysis information necessary for proper treatment, storage, and disposal of mixed waste; and,

(4) The implications of the RCRA land disposal restrictions (LDRs) on the waste characterization and analysis requirements.

This information should be useful for: (1) radioactive waste generators, who must determine if their waste is a RCRA hazardous waste, and therefore a mixed waste; (2) for those generators storing mixed waste on-site in tanks, containers or containment buildings for longer than 90 days, that consequently become responsible for complying with RCRA and NRC storage requirements; and (3) those facilities that accept mixed waste for off-site treatment, storage, or disposal.

Generators and/or treatment, storage, and disposal facilities (TSDFs) handling wastes under RCRA must characterize their waste for several purposes:

(1) To determine if their waste is a hazardous waste (40 CFR 262.11);

(2) To comply with general waste analysis requirements for new or permitted TSDFs, for TSDFs operating under interim status, and for certain generators that treat land disposal prohibited wastes in 40 CFR 264.13, 265.13 and 268.7, respectively. These analysis requirements include:

(a) chemical/physical analysis of a representative sample (and/or, in some cases, use waste knowledge (see below); and,

(b) preparation of a waste analysis plan.

(3) To meet the waste analysis requirements that apply to the specific waste management methods in 40 CFR 264.17, 264.314, 264.341, 264.1034(d), and 268.7;

(4) To ensure, prior to land disposal, that the restricted waste meets the required treatment standard (40 CFR 268.7).[4]

This guidance addresses the need for chemical analysis of mixed wastes to meet these purposes. The guidance also emphasizes ways in which unnecessary testing of mixed waste may be avoided. This is important when handling mixed waste, since each sampling, workup, or analytical event may involve an incremental exposure to radiation. This guidance encourages mixed waste handlers to use waste knowledge, such as process knowledge, where possible, in making RCRA hazardous waste determinations involving mixed waste. It also encourages the elimination of redundant testing by off-site treatment and disposal facilities, where valid generator-supplied, and certified, data are available.

Because mixed waste testing may pose the possibility of increased radiation exposures, this guidance also describes methods by which individuals who analyze mixed waste samples may reduce their occupational radiation exposure and satisfy the intent of the RCRA testing requirements. Testing to determine whether wastes are hazardous under the RCRA toxicity characteristic may pose special concerns which are examined in Section III of this guidance.

All of the activities described in this guidance are subject to the requirements of both the AEA and RCRA. The focus of this guidance is the RCRA requirements. NRC and NRC Agreement State licensees are authorized to receive, possess, use (which includes storing, sampling, testing, and treating), and dispose of AEA-licensed materials. NRC licensees handling mixed waste should ensure that their RCRA hazardous waste testing activities are consistent with NRC, or Agreement State, regulations and license conditions. Flexibility in the RCRA requirements is emphasized so that the As Low As is Reasonably Achievable (ALARA) concept can be incorporated into the mixed waste testing activities.[5] If other AEA requirements, or RCRA requirements are difficult to meet in a specific mixed waste management situation, licensees should seek resolution by requesting license amendments, approval of modifications to their RCRA permits or interim status Part A applications, or resolution under both authorities.

Section 1006(a) of RCRA states ''Nothing in this Act shall be construed to apply to (or authorize any State, interstate, or local authority to regulate) any activity or substance which is subject to * * * the Atomic Energy Act of 1954 * * * except to the extent that such application (or regulation) is not inconsistent with the requirements of such Acts.'' If a resolution cannot be achieved through the flexibility provided by the two regulatory frameworks, then and only then, should licensees seek resolution under Section 1006(a) of RCRA. Licensees should note that, if an inconsistency exists, relief will be limited to that specific RCRA requirement, and that the determination of an inconsistency would not relieve the licensee from all other RCRA requirements. Section 1006(a) and radiological hazard considerations are addressed more fully in Sections III and IV of this guidance. NRC licensees should also include the necessary flexibility in their RCRA permit waste analysis plans to accommodate the sampling and testing required to meet AEA requirements.

II. Use of Waste Knowledge for Hazardous Waste Determinations

The use of waste knowledge by a generator and/or a TSDF to characterize mixed waste is recommended throughout this document to eliminate unnecessary or redundant waste testing. EPA interprets ''waste knowledge'' or ''acceptable knowledge'' of a waste broadly to include, where appropriate:

- ''Process knowledge'';
- Records of analyses performed by generator or TSDF prior to the effective date of RCRA regulations; or,
- A combination of the above information, supplemented with chemical analysis.

Process knowledge refers to detailed information on processes that generate wastes subject to characterization, or to detailed information (e.g., waste analysis data or studies) on wastes generated from processes similar to that which generated the original waste. Process knowledge includes, for example, waste analysis data obtained by TSDFs from the specific generators that sent the waste off-site, and waste analysis data obtained by generators or TSDFs from other generators, TSDFs or areas within a facility that test chemically identical wastes.[6]

[3] The RCRA base hazardous waste program is the RCRA program initially made available for final authorization and includes Federal regulations up to July 26, 1982. However, authorized States have revised their programs to keep pace with Federal program changes that have taken place after 1982 in accordance with EPA regulation.

[4] Refer to Appendix A for specific EPA regulations pertaining to (1)–(4).

[5] ALARA, codified in 10 CFR Part 20, refers to the practice of maintaining all radiation exposures, to workers and the general public, as low as is reasonably achievable.

[6] For a more detailed discussion on process knowledge, see Section 1.5 in ''Waste Analysis at

Continued

Waste knowledge is allowed by RCRA regulations for the following hazardous waste characterization determinations:

- To determine if a waste is characteristically hazardous (40 CFR 262.11(c)(2)) or matches a RCRA listing in 40 CFR Part 261, Subpart D (40 CFR 262.11(a) and (b));
- To comply with the requirement to obtain a detailed chemical/physical analysis of a representative sample of the waste under 40 CFR 264.13(a);
- To determine whether a hazardous waste is restricted from land disposal (40 CFR 268.7(a)); and,
- To determine if a restricted waste the generator is managing can be land disposed without further treatment (see the generator certification in 40 CFR 268.7(a)(3) and information to support the waste knowledge determination in 40 CFR 268.7(a)(6)).

Hazardous waste, including mixed waste, may be characterized by waste knowledge alone, by sampling and laboratory analysis, or a combination of waste knowledge, and sampling and laboratory analysis. The use of waste knowledge alone is appropriate for wastes that have physical properties that are not conducive to taking a laboratory sample or performing laboratory analysis. As such, the use of waste knowledge alone may be the most appropriate method to characterize mixed waste streams where increased radiation exposures are a concern. Mixed waste generators should contact the appropriate EPA regional office to determine whether they possess adequate waste knowledge to characterize their mixed waste.

III. Determinations by Generators That a Waste Is Hazardous

A solid waste is a RCRA hazardous waste if it meets one of two conditions: (1) the waste is specifically ''listed'' in 40 CFR Part 261, Subpart D, or; (2) the waste exhibits one of the four ''characteristics'' identified in 40 CFR Part 261, Subpart C. These characteristics are:

- Ignitability;
- Corrosivity;
- Reactivity; or,
- Toxicity.

(a) Listed Hazardous Wastes

Generators of waste containing a radioactive and solid waste component must establish whether the solid waste component is a RCRA hazardous waste. Determinations of whether a waste is a listed hazardous waste can be made by comparing information on the waste stream origin with the RCRA listings set forth in 40 CFR Part 261, Subpart D. These listings are separated into three major categories or lists, and are identified by EPA hazardous waste numbers. Most hazardous waste numbers are associated with a specific waste description, specific processes that produce wastes, or certain chemical compounds. For example, K103 waste is defined as ''process residues from aniline extraction from the production of aniline.'' A generator who produces such residues should know, without any sampling or analysis, that these wastes are ''listed'' RCRA hazardous wastes by examining the K103 hazardous waste description in the hazardous waste lists. Other hazardous waste numbers describe wastes generated from generic processes that are common to various industries and activities. These wastes are referred to as hazardous wastes from nonspecific sources. Radioactively contaminated spent solvents are the most likely mixed wastes to be nonspecific source listed wastes. For example, a generator using one of the F002 halogenated solvents (e.g., tetrachloroethylene, trichloroethylene, and chlorobenzene, etc.) to remove paint from a radiologically contaminated surface, can determine that this waste is a listed RCRA hazardous waste by examining the F002 waste definition for the solvent type, and for a solvent mixture/blend, the percent solvent by volume.

In addition to wastes that are specifically listed as hazardous, the ''derived from'' and ''mixture'' rules state that any solid waste derived from the treatment, storage, or disposal of a listed RCRA hazardous waste, or any solid waste mixed with a listed RCRA hazardous waste, respectively, is itself a listed RCRA hazardous waste until delisted (see 40 CFR 261.3).[7] (Note that soil and debris can be managed as hazardous wastes if they contain listed hazardous wastes or they exhibit one or more hazardous waste characteristics. See hazardous debris definition in 40 CFR 268.2.)

Exceptions to the ''mixture rule'' and ''derived from'' rules exist for certain solid wastes. For example, wastewater discharges subject to Clean Water Act permits, under certain circumstances, are not RCRA hazardous (see 40 CFR 261.3(a)(2)(iv)). Also, hazardous wastes which are listed solely for a characteristic identified in Subpart C of 40 CFR Part 261 (e.g., a F003 spent solvent which is listed only because it is ignitable) are not considered hazardous wastes when they are mixed with a solid waste and the resultant mixture no longer exhibits any characteristic of a hazardous waste (see 40 CFR 261.3(a)(2)(iii)). Likewise, waste pickle liquor sludge ''derived from'' the lime stabilization of spent pickle liquor (e.g., K062) is not a RCRA listed hazardous waste, if the sludge does not exhibit a hazardous waste characteristic (see discussion below on characteristic hazardous wastes). It should be noted, however, that wastes such as F003 and K062 *must* meet LDR treatment standards. Outside of the exceptions mentioned here and in the RCRA regulations, a hazardous waste that was generated via the ''mixture rule'' or the ''derived from'' rule must be delisted through a specific EPA petition process for the listed waste to be considered only a solid waste, and no longer managed as a listed hazardous waste under the RCRA Subtitle C system.

When applying the mixture rule to hazardous wastes, including mixed wastes, generators should be aware that EPA prohibits the dilution (i.e., mixing) of land disposal restricted waste or treatment residuals as a substitute for adequate treatment (see 40 CFR 268.3). An exception to the prohibition is the dilution of purely corrosive, and in some cases, reactive, or ignitable non-toxic wastes to eliminate the characteristic, or the aggregation of characteristic wastes in (pre)treatment systems regulated under the Clean Water Act (55 *FR* 22665).

(b) Characteristic Hazardous Wastes

Hazardous characteristics are based on the physical/chemical properties of wastes. Thus, physical/chemical testing of waste may be appropriate for determining whether a waste is a characteristic hazardous waste. *RCRA regulations, however, do not require testing. Rather, generators must determine whether the waste is a RCRA hazardous waste.* Such a determination may be made based on one's knowledge of the materials or chemical processes that were used. EPA's regulations are clear on this point. 40 CFR 262.11(c) states:

Facilities That Generate, Treat, Store, and Dispose of Hazardous Wastes'' OSWER 9938.4–03, April 1994.

[7] The ''mixture'' and ''derived-from'' rules were vacated and remanded due to EPA's failure to provide adequate notice and opportunity for comment before their 1980 promulgation, in *Shell Oil* v. *EPA*, No. 80–1532 (D.C. Cir. Dec. 6, 1991). At the Court's suggestion, EPA reinstated the ''mixture'' and ''derived-from'' rules as interim final until the rules are revised through new EPA rulemaking. The ''mixture'' and ''derived from'' rules adopted by those States with authorized RCRA programs were not affected by the court case or the subsequent reinstatement by EPA. For further information, see 57 *FR* 49278, October 30, 1992, and 60 *FR* 66344, December 21, 1995.

''. . . if the waste is not listed [as hazardous waste] in Subpart D [of 40 CFR Part 261], the generator must then determine whether the waste is identified in Subpart C of 40 CFR Part 261 by either:

(1) Testing the waste according to the methods set forth in Subpart C of 40 CFR Part 261, or according to an equivalent method approved by the Administrator under 40 CFR 260.21; or

(2) Applying knowledge (emphasis added) of the hazardous characteristic of the waste in light of the materials or the processes used.''

Therefore, where sufficient material or process knowledge exists, the generator need not test the waste to make a hazardous characteristic determination, although generators and subsequent handlers would be in violation of RCRA, if they managed hazardous waste erroneously classified as non-hazardous, outside of the RCRA hazardous waste system. For this reason, facilities wishing to minimize testing often assume a questionable waste is hazardous and handle it accordingly.

A generator must also comply with the land disposal restriction regulations in 40 CFR 268 which require the generator to determine whether the waste is prohibited from land disposal (refer to Section V for a detailed discussion of these requirements).[8] With respect to the hazardous characteristic, and the determination as to whether a waste is restricted from land disposal under 40 CFR 268.7(a), a generator may select the option of using waste knowledge. However, if the waste is determined to be land disposal restricted in 40 CFR 268.7(a), some testing will generally be required prior to land disposal, except where technologies are specified as the treatment standard. For mixed waste, EPA recommends that the frequency of such testing be held to a minimum, in order to avoid duplicative testing and repeated exposure to radiation.

In determining whether a radioactive waste is a RCRA hazardous waste, the generator may test a surrogate material (i.e., a chemically identical material with significantly less or no radioactivity) to determine the RCRA status of the radioactive waste. This substitution of a surrogate material may either partially or completely supplant the testing of the waste. A surrogate material, however, should only be used if the surrogate material faithfully represents the hazardous constituents of the mixed waste.[9] The following example discusses the use of surrogates. A generator is required to determine if a process waste stream containing lead (D008) exceeds the regulatory level of 5.0 milligrams per liter for the toxicity characteristic (40 CFR 261.24). If this determination cannot be made based on material and process knowledge only, the generator would need to test the hazardous material. Rather than testing the radioactive waste stream, the generator may opt to test a surrogate or chemically identical non-radioactive, or lower activity, radioactive waste stream generated by similar maintenance activities in another part of the plant. This substitution of materials is acceptable as long as the surrogate material faithfully represents the characteristics of the actual waste, and testing provides sufficient information for the generator to reasonably determine if the waste is hazardous under RCRA. Non-radioactive or lower activity quality control samples/species and spiked solutions, for instance, are acceptable to minimize exposure to radiation from duplicative mixed waste testing.

As part of the hazardous waste determination, a generator must document test results or other data and methods that it used. Specifically, 40 CFR 262.40(c) states that ''a generator must keep records of any test results, waste analyses, or other determinations made in accordance with 40 CFR 262.11 for at least three years from the date that the waste was last sent to on-site or off-site treatment, storage, or disposal.'' Section V of this guidance contains information on record keeping requirements for land disposal restricted hazardous (and mixed) wastes.

In summary, testing listed wastes to make the hazardous waste determination is not necessary, because most RCRA hazardous waste codes or listings identify specific waste streams from specific processes or specific categories of wastes. Testing will most often occur to determine if a waste exhibits a hazardous characteristic. However, testing is not required if a generator has sufficient knowledge about the waste and its physical/chemical properties to determine that it is non-hazardous.[10] It is recognized that certain mixed waste streams, such as wastes from remediation activities or wastes produced many years ago, may have to be identified using laboratory analysis, because of a lack of waste or process information on these waste streams. Nonetheless, hazardous waste determinations based on generator knowledge can be used to reduce the sampling of mixed waste and prevent unnecessary exposure to radioactivity. The same principle holds for a generator's determination that a waste is subject to the RCRA land disposal restrictions in 40 CFR 268.7(a).

IV. Testing Protocols for Characteristics

When testing is conducted to determine whether a waste is a RCRA hazardous waste, there are acceptable test protocols or criteria for each of the four characteristics. Testing for characteristics must be done on a representative sample of the waste or using any applicable sampling methods specified in Appendix I of 40 CFR 261.[11]

Ignitability—For liquid wastes, other than aqueous solutions containing by volume less than 24 percent alcohol, the flash point is to be determined by a Pensky-Martens Closed Cup Tester, using the test method specified in American Society of Testing and Materials (ASTM) Standard D–93–79 or D–93–80, or a Setaflash Closed Cup Tester, using the test method specified in ASTM Standard D–3278–78, or as determined by an equivalent test method approved by the Administrator under procedures set forth in 40 CFR 260.20 and 260.21 (see ''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,'' 3rd Ed., as amended, EPA, OSWER, SW–846, Methods 1010 and 1020[12]). (Non-liquid

[8] Generators who also treat their waste are subject to the requirements for treatment facilities unless they treat waste in accumulation tanks, containers, or containment buildings, for 90 days or less in accordance with 40 CFR 262.34(a). Treatment facilities must periodically test the treated waste residue from prohibited wastes to determine whether it meets the best demonstrated available technology (BDAT) treatment standards and may not rely on materials and process knowledge to make this determination (40 CFR 268.7(b)). This testing must be conducted according to the frequency specified in the facility's waste analysis plan (refer to Section IV of this guidance for a detailed discussion of treatment, storage, and disposal facility requirements).

[9] This definition of surrogate should not be confused with the definition of surrogate for the purposes of sampling and analysis quality control in Section 1.1.8 of ''*Evaluating Solid Waste—Volume IA: Laboratory Test Methods Manual Physical/Chemical Methods.*''

[10] Note that characteristic only wastes (which are neither wastewater mixtures or RCRA listed hazardous wastes when generated) may be treated so that they no longer exhibit any of the four characteristics of a hazardous waste. However, these wastes may still be subject to the requirements of 40 CFR Part 268, even if they no longer exhibit a hazardous characteristic at the point of land disposal. After treatment this waste must not exhibit any RCRA hazardous waste characteristic *and* must meet applicable treatment standards before it can be considered a non-hazardous waste (see 57 *FR* 37263, August 18, 1992, and 58 *FR* 29869, May 24, 1993).

[11] Note that hazardous and mixed waste samples analyzed for waste characteristics or composition, and samples undergoing treatability studies may be exempt from all or part of the RCRA regulations if they are managed in accordance with 40 CFR 261.4 (d), (e) or (f).

[12] EPA incorporated by reference into the RCRA regulations (58 *FR* 46040, August 31, 1993), a third edition (and its updates) of ''Test Methods for the Evaluation of Solid Waste, Physical/Chemical Methods.'' The updates can be found in 60 *FR* 3089, January 13, 1995 (update II), 59 *FR* 458, January 4, 1994 (update IIA), 60 *FR* 17001, April 4, 1995

Continued

wastes, compressed gases, and oxidizers may exhibit the characteristic of ignitability as described in 40 CFR 261.21 (a)(2–4).)

Corrosivity—For aqueous solutions, the pH is to be determined by a pH meter using either an EPA test method (i.e., SW–846, Method 9040 or an equivalent test method approved by the Administrator under procedures set forth in 40 CFR 260.20 and 260.21.) For liquids, steel corrosion is to be determined by the test method specified in National Association of Corrosion Engineers (NACE) Standard TM–01–69 as standardized in ''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,'' 3rd Ed., as amended (EPA, OSWER, SW–846, Method 1110), or an equivalent test method approved by the Administrator under procedures set forth in 40 CFR 260.20 and 260.21.

Reactivity—There are no specified test protocols for reactivity. 40 CFR 261.23 defines reactive wastes to include wastes that have any of the following properties: (1) normally unstable and readily undergoes violent change without detonating; (2) reacts violently with water; (3) forms potentially explosive mixtures with water; (4) generates dangerous quantities of toxic fumes, gases, or vapors when mixed with water; (5) in the case of cyanide- or sulfide-bearing wastes, generates dangerous quantities of toxic fumes, gases, or vapors when exposed to acidic or alkaline conditions; (6) explodes when subjected to a strong initiating force or if heated under confinement; (7) explodes at standard temperature and pressure; or (8) fits within the Department of Transportation's forbidden explosives, Class A explosives, or Class B explosives classifications.[13]

EPA has elected to rely on a descriptive definition for these reactivity properties because of inherent deficiencies associated with available methodologies for measuring such a varied class of effects, with the exception of the properties discussed in No. 5, above. The method used, as guidance but not required, to quantify the reactive cyanide and sulfide bearing wastes is provided in Chapter 7 of ''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,'' 3rd Ed., as amended, EPA, OSWER, SW–846.

Toxicity Characteristic—The test method that may be used to determine whether a waste exhibits the toxicity characteristic (TC) is the Toxicity Characteristic Leaching Procedure (TCLP), as described in 40 CFR Part 261, Appendix II (SW–846, Method 1311). The TCLP was modified and revised in 55 *FR* 11798, March 29, 1990. Note that this revised TCLP is used (in most cases) for land disposal restriction compliance determinations as well. Differences between the TCLP and the previously required Extraction Procedure (EP) include improved analysis of the leaching of organic compounds, the elimination of constant pH adjustment, the addition of a milling or grinding requirement for solids (waste material solids must be milled to particles less than 9.5 mm in size), and other more detailed alterations.[14] Additionally, the TC rule added 25 organic compounds to the toxicity characteristic.

The TCLP (Method 1311) recommends the use of a minimum sample size of 100 grams (solid and liquid phases as described in Section 7.2). *For mixed waste testing, sample sizes of less than 100 grams can be used, if the analyst can demonstrate that the test is still sufficiently sensitive to measure the constituents of interest at the regulatory levels specified in the TCLP and representative of the waste stream being tested.* Other variances to the published testing protocols are permissible (under 40 CFR 260.20–21), but must be approved prior to implementation by EPA. Use of a sample size of less than 100 grams is highly recommended for mixed wastes with concentrations of radionuclides that may present serious radiation exposure hazards.

Additionally, Section 1.2 of the TCLP allows the option of performing a ''total constituent analysis'' on a hazardous waste or mixed waste sample, instead of the TCLP. Section 1.2 of Method 1311 states:

> If a total analysis of the waste demonstrated that the individual analytes are not present in the waste, or that they are present, but at such low concentrations that the appropriate regulatory levels could not possibly be exceeded, the TCLP need not be run.

For homogenous samples, the use of total constituent analysis in this manner eliminates the need to grind or mill solid waste samples. The grinding or milling step in the TCLP has raised ALARA concerns for individuals who test mixed waste. The use of total constituent analysis, instead of the TCLP, may also minimize the generation of secondary mixed or radioactive waste through the use of smaller sample sizes and reduction, or elimination, of high dilution volume leaching procedures.

Flexibility in Mixed Waste Testing

Flexibility exists in the hazardous waste regulations for generators, TSDFs, and mixed waste permit writers to tailor mixed waste sampling and analysis programs to address radiation hazards. For example, upon the request of a generator, a person preparing a RCRA permit for a TSDF has the flexibility to minimize the frequency of mixed waste testing by specifying a low testing frequency in a facility's waste analysis plan. EPA believes, as stated in 55 FR 22669, June 1, 1990, that ''the frequency of testing is best determined on a case-by-case basis by the permit writer.''

EPA's hazardous waste regulations also allow a mixed waste facility the latitude to change or replace EPA's test methods (i.e., *Test Methods for Evaluating Solid Waste* (SW–846)) to address radiation exposure concerns. There are only fourteen sections of the hazardous waste regulations that require the use of specific test methods or appropriate methods found in SW–846 which are outlined in Appendix A.[15] However, any person can request EPA for an equivalent testing or analytical method that would replace the required EPA method (see 40 CFR 260.21).

In a recent amendment to the testing requirements, EPA added language to SW–846 that describes fourteen citations in the RCRA program (listed in Appendix A) where the use of SW–846 methods is mandatory (Update II, 60 FR 3089, January 13, 1995). In all other cases, the RCRA program functions under what we call the Performance Based Measurement System (PBMS) approach to monitoring. Language clarifying this approach was included in the final FR Notice which promulgated Update III (62 FR 32542, June 13, 1997) and in appropriate sections (Disclaimer, Preface and Overview, and Chapter 2) of SW–846. Under PBMS, the regulation and/or permit focus is on the question(s) to be answered by the monitoring, the degree of confidence (otherwise known as the Data Quality Objective (DQO)) or the measurement quality objectives (MQO) that must be achieved by the permittee to have demonstrated compliance, and the specific data that must be gathered and documented by the permittee to demonstrate that the objectives were actually achieved. ''Any reliable method'' may be used to demonstrate that one can see the analytes of concern in the matrix of

(update IIB), and 62 *FR* 32452, June 13, 1996 (update III). Hazardous and mixed waste generators and management facilities should verify that the analytical method that they use to analyze hazardous waste has not been superseded in the third edition.

[13] When evaluating test protocols for explosive mixed waste, consideration should be given to the likelihood for dispersing radioactivity during detonation. Using process knowledge or a surrogate material would, in most instances, be appropriate for these wastes.

[14] Note that when using the TCLP, if any liquid fraction of the waste positively determines that hazardous constituents in the waste are above regulatory levels, then it is not necessary to analyze the remaining fractions of the waste. Extraction using the zero headspace extraction vessel (ZHE) is not required, furthermore, if the analysis of an extract obtained using a bottle extractor demonstrates that the concentration of a volatile compound exceeds the specified regulatory levels. The use of a bottle extractor, however, may not be used to demonstrate that the concentration of a volatile compound is below regulatory levels (40 CFR Part 261 Appendix II Sections 1.3 and .4).

[15] With the exception of the fourteen areas (see Appendix D) where test methods are required by hazardous waste regulation, use of EPA's *Test Methods for the Evaluation of Solid Waste* (SW–846) is not required, and should be viewed as guidance on acceptable sampling and analysis methods.

concern at the levels of concern. Additional reference documents on the characterization and testing methods are listed in Appendix C.

NRC regulations do not describe specific testing requirements for wastes to determine if a waste is radioactive. However, both NRC and Department of Transportation regulations contain requirements applicable to characterizing the radioactive content of the waste before shipment. For example, NRC's regulations in 10 CFR 20.2006 require that the waste manifest include, as completely as practicable, the radionuclide identity and quantity, and the total radioactivity. NRC regulations also require that generators determine the disposal Class of the radioactive waste, and outline waste form requirements that must be met before the waste is suitable for land disposal. These regulations are referenced in 10 CFR 20.2006, and are outlined in detail at 10 CFR 61.55 and 61.56. Mixed waste generators are reminded that both RCRA waste testing and NRC waste form requirements must be satisfied. Generators may also be required to amend their NRC or Agreement State licenses in order to perform the tests required under RCRA. In addition, if an NRC licensee uses an outside laboratory to test his or her waste, that laboratory may be required to possess an NRC or Agreement State license. It is the responsibility of the generator to determine if the outside laboratory possesses the proper license(s) prior to transferring the waste to the laboratory for testing.

Where radioactive wastes (or wastes suspected of being radioactive) are involved in testing, it has been suggested that the testing requirements of RCRA may run counter to the aims of the AEA. The AEA requirements that have raised inconsistency concerns with respect to RCRA testing procedures include ALARA, criticality, and security. Neither EPA nor NRC is aware of any specific instances where RCRA compliance has been inconsistent with the AEA. However, both agencies acknowledge the potential for an inconsistency to occur.[16] A licensee or applicant who suspects that an inconsistency may exist should contact both the AEA and RCRA regulatory agencies. These regulatory agencies may deliberate and consult on whether there is an unresolvable inconsistency and, if one exists, they may attempt to fashion the necessary relief from the particular RCRA provision that gives rise to the inconsistency. However, all other RCRA regulatory requirements would apply. That is, such a conclusion does not relieve hazardous waste facility owner/operators of the responsibility to ensure that the mixed waste is managed in accordance with all other applicable RCRA regulatory requirements. Owner/operators of mixed waste facilities are encouraged to address and document this potential situation and its resolution in the RCRA facility waste analysis plan which must be submitted with the Part B permit application, or addressed in a permit modification.

Both agencies also believe that the potential for inconsistencies can be reduced significantly by a better understanding of the RCRA requirements, a greater reliance on materials and process knowledge, the use of surrogate materials when possible, and the use of controlled atmosphere apparatuses for mixed waste testing. Where testing is conducted, the use of glove boxes and other controlled atmosphere apparatuses during the testing of the radioactive waste material lessens radiation exposure concerns significantly. These protective measures may also help to reconcile the required testing requirements (including milling) with concerns about maintaining exposures to radiation ALARA and complying with other AEA protective standards. If such protective measures do not exist, or do not adequately reduce individual exposure to radiation or address other factors of concern, relief may be available under Section 1006 of RCRA.

V. Determinations by Treatment, Storage, or Disposal Facility Owner/Operators and Certain Generators to Ensure Proper Waste MaNagement

General Waste Analysis

Owner/operators of facilities that treat, store, or dispose of hazardous wastes must obtain a chemical and physical analysis of a representative sample of the waste (see 40 CFR 264.13 for permitted facilities, or 40 CFR 265.13 for interim status facilities).[17] The purpose of this analysis is to assure that owner/operators have sufficient information on the properties of the waste to be able to treat, store, or dispose of the waste in a safe and appropriate manner.

The waste analysis may include data developed by the generator, and existing, published, or documented data on the hazardous waste or on hazardous waste generated from similar processes. In some instances, however, information supplied by the generator may not fully satisfy the waste analysis requirement. For example, in order to treat a particular waste, one may need to know not only the chemical composition of the waste, but also its compatibility with the techniques and chemical reagents used at the treatment facility. Where such information is not otherwise available, the owner/operator will be responsible for gathering relevant data on the waste in order to ensure its proper management.

The analysis must be repeated only if the previous analyses are inaccurate or needs updating. EPA regulations at 40 CFR 264.13(a)(3) do require that, at a minimum, a waste must be re-analyzed if:

(1) The owner/operator is notified, or has reason to believe, that the process or operation generating the waste has changed [in a way such that the hazardous property or characteristics of the waste would change]; and

(2) For off-site facilities, when the results of the verification analysis indicate that the [composition or characteristics of the] waste does not match the accompanying manifest or shipping paper.

The requirements and frequency of waste analysis for a given facility are described in the facility's waste analysis plan. As required by 40 CFR 264.13(b), the waste analysis plan must specify the parameters for which each hazardous waste will be analyzed; the rationale for selecting these parameters (i.e., how analysis for these parameters will provide sufficient information on the waste's properties); and the test methods that will be used to test for these parameters. The waste analysis plan also must specify the sampling method that will be used to obtain a representative sample of the waste to be analyzed; the frequency with which the initial analysis of the waste will be reviewed or repeated, to ensure that the analysis is accurate and up to date; and, for off-site facilities, the waste analyses to be supplied by the hazardous waste generators. Finally, the waste analysis plan must note any additional waste analysis requirements specific to the waste management method employed, such as the analysis of the waste feed to be burned in an incinerator.

The appropriate parameters for each waste analysis plan are determined on an individual basis as part of the permit

[16] An inconsistency occurs when compliance with one statute or set of regulations would necessarily cause non-compliance with the other. It may stem from a variety of considerations, including those related to occupational exposure, criticality, and other safeguards.

[17] A representative sample is defined in 40 CFR 260.10 as ''a sample of a universe or whole (e.g., waste pile, lagoon, ground water) which can be expected to exhibit the average properties of the universe or whole.'' For further guidance see Chapter 9 of the EPA's testing guidance entitled *Test Methods for Evaluating Solid Waste* or SW–846.

application review process. To reduce the inherent hazards of sampling and analyzing radioactive material, and in particular, the potential risk to workers from exposure to radiation posed by duplicative testing of mixed wastes, redundant testing by the generator and off-site facilities should be avoided. In addition, waste analysis plans must include provisions to keep exposures to radiation ALARA, and incorporate relevant AEA-related requirements and regulations.

Analysis Required to Verify Off-site Shipments

The owner/operator of a facility that receives mixed waste from off-site must inspect and, *if necessary,* analyze each hazardous waste shipment received at the facility to verify that it matches the identity of the waste specified on the accompanying LDR notification or manifest (see 40 CFR 264.13 or 265.13(c)). This testing is known as verification testing. Such inspections and analysis will follow sampling and testing procedures set forth in the facility's waste analysis plan, which is kept at the facility.

It should also be emphasized that, where analysis is necessary, *RCRA regulations do not necessarily require the analysis of every movement of waste received at an off-site facility*. As explained above, the purpose of the waste analysis is to verify that the waste received at off-site facilities is correctly identified, and to provide enough information to ensure that it is properly managed by the facilities.

For example, if a facility receives a shipment of several sealed drums of mixed waste, a representative sample from only one drum may be adequate, if the owner/operator has reason to believe that the chemical composition of the waste is identical in every drum. In such a case, the drum containing the least amount of measurable radioactivity could be sampled to minimize radiation exposures (variations in radioactivity do not necessarily suggest different chemical composition). This procedure also would apply to a shipment of several types of waste. If the owner/operator has reason to believe that the drums in the shipment contain different wastes, then selecting a representative sample might involve drawing a sample from each drum or drawing a sample from one drum in each ''set'' of drums containing identical wastes. Once this waste analysis requirement has been satisfied, routine retesting of later shipments would not be required if the owner/operator can determine that the properties of the waste he or she manages will not change.

Fingerprint Analysis Versus Full Scale Analysis

Full scale analysis (i.e., detailed physical and chemical analysis) may be used to comply with the waste analysis plan, including verification of off-site shipments. However, for mixed waste, abbreviated analysis or ''fingerprint analysis'' may be more appropriate to meet general waste analysis requirements. The test procedure should be determined on a case-by-case basis.

Fingerprint analysis (which may involve monitoring pH, percent water, and cyanide content) is particularly recommended for mixed waste streams with high radiation levels that are received by an off-site TSDF for RCRA waste manifest verification purposes. It may be appropriate to use full scale analysis, instead of, or after, fingerprint analyses, if the facility suspects that the waste was not accurately characterized by the generator, information provided by a generator is incomplete, waste is received for the first time, or the generator changes a process or processes that produced the waste.

Generators Who Treat LDR Prohibited Waste In Tanks, Containers or Containment Buildings To Meet LDR Treatment Requirements

Hazardous waste generators may treat hazardous wastes in tanks or containers without obtaining a permit if the treatment is done in accordance with the accumulation timeframes and requirements in 40 CFR 262.34. However, generators who treat hazardous waste (including mixed wastes) to meet the EPA treatment standards for land disposal prohibited wastes must also prepare a waste analysis plan similar to that prepared by TSDFs. The plan must be based on a detailed analysis of a representative sample of the LDR prohibited waste that will be treated. In addition, the plan should include all the information that is necessary to treat the waste, including the testing frequency (See 40 CFR 268.7(a)(5)).

VI. Determinations Under the Land Disposal Restrictions

Generators, as well as treatment facilities and land disposal facilities, that handle mixed waste may have to obtain or amend their radioactive materials licenses if they test or treat mixed waste under the LDRs. The following discussion assumes that generators and treatment and disposal facilities have satisfied the requirement to obtain, or amend, their radioactive materials licenses, as appropriate.

Waste knowledge may also be used to satisfy certain waste characterization requirements imposed by the LDRs for mixed wastes. The Hazardous and Solid Waste Amendments (HSWA) to RCRA (P.L. 98–616), enacted on November 8, 1984, established the LDR program. This Congressionally mandated program set deadlines (RCRA Sections 3004(d)-(g)) for EPA to evaluate all hazardous wastes and required EPA to set levels, or methods, of treatment which would substantially diminish the toxicity of the waste, or minimize the likelihood of migration of hazardous constituents from any RCRA waste. Beyond specified dates, prohibited wastes that do not meet the treatment standards before they are disposed of, are banned from land disposal unless they are disposed of in a so-called ''no-migration'' unit (i.e., a unit where the EPA Administrator has granted a petition which successfully demonstrated to a reasonable degree of certainty that there will be no migration of hazardous constituents from the disposal unit for as long as the wastes remain hazardous)(40 CFR 268.6). Certain categories of prohibited wastes also may be granted extensions of the effective dates of the land disposal prohibitions (i.e., case-by-case and national capacity variances (40 CFR 268.5 and Subpart C, respectively). However, these wastes are still restricted and, if disposed in landfills or surface impoundments, must be disposed of in units meeting the minimum technology requirements.[18]

The requirements of the LDR program apply to generators, transporters, and owner/operators of hazardous waste treatment, storage, and disposal facilities. Not all hazardous wastes are subject to 40 CFR Part 268. For instance, certain wastes that are identified or listed after November 8, 1984, such as newly identified mineral processing wastes for which land disposal prohibitions or treatment standards have not yet been promulgated, are not regulated under 40 CFR Part 268.[19]

[18] A prohibited waste may not be land disposed unless it meets the treatment standards established by EPA. These standards are usually based on the performance of the BDAT. A waste that is subject to an extension, such as a national capacity variance, does not need to comply with the BDAT treatment standards, but is ''restricted'' and if it is going to be disposed in a landfill or surface impoundment, it can only be disposed of in a unit that meets the minimum technology requirements (MTRs). An exception exists for interim status surface impoundments which may continue receiving newly identified and restricted wastes for four years from the date of promulgation of the listings or characteristics before being retrofitted to meet the MTRs (RCRA Section 3005(j)(6)), so long as the only hazardous wastes in the impoundment are newly identified or listed.

[19] The treatment standards for mineral processing wastes and certain additional newly listed waste streams were proposed in 61 *FR* 2338, January 25,

Determinations by Generators

Under 40 CFR 268.7(a), generators must determine whether their waste is restricted from land disposal (or determine if they are subject to an exemption or variance from land disposal (40 CFR 268.1)) by testing their waste (or a leachate of the waste developed using the TCLP or, in certain cases, the Extraction Procedure Toxicity Test (EP), or by using waste or process knowledge). If the waste exhibits the characteristic of ignitability (and is not in the High Total Organic Constituents (TOC) Ignitable Liquids Subcategory or is not treated by the ''CMBST'' or ''RORGS'' treatment technology in 40 CFR 268.42, Table 1), corrosivity, reactivity and/or organic toxicity, the generator must also determine the underlying hazardous constituents (UHCs) in the waste. Two exceptions to this requirement are: (1) if these wastes are treated in wastewater treatment systems subject to the Clean Water Act (CWA) or CWA equivalent; or, (2) if they are injected into a Class I, non-hazardous Underground Injection Control well. A UHC is any constituent listed in 40 CFR 268.48, Table UTS-Universal Treatment Standards, with the exceptions of nickel, zinc and vanadium, which can reasonably be expected to be present at the point of generation of the hazardous waste, at a concentration above the constituent-specific UTS treatment standard. Determining the presence of the UHCs may be made based on testing or knowledge of the waste. The UHCs must meet the UTS before the waste may be land disposed.

If a generator chooses to test the waste rather than use waste or process knowledge for hazardous waste that is not listed and exhibits a characteristic only, the generator must use the TCLP. The only exception is TC metals.

Until the ''Phase IV'' LDR rule is promulgated in the spring of 1998, generators who characterize their wastes as TC toxic only for metals may use the EP instead of the TCLP result to determine if their waste is land disposal restricted, because the TC wastes do not have final EPA treatment standards whereas, at this time, the EP metals do. If the EP result is negative, the waste will still be considered hazardous, but is not prohibited from land disposal. The TCLP generally yields similar results as the EP. However, in certain matrices the TCLP yields higher lead and arsenic concentrations than the EP. The rationale for using the EP instead of the TCLP for characteristic wastes is explained in 55 FR 3865, January 31, 1991. For further guidance on using the EP for the land disposal restriction determination, refer to the Figures 1 and 2, of this guidance.

If a waste is found to be land disposal restricted, generators must determine if the waste can be land disposed without further treatment. A prohibited waste may be land disposed if it meets applicable treatment standards (whether through treatment or simply as generated), or is subject to a variance from the applicable standards. As explained above, this determination can be made either based on knowledge of the waste or by testing the waste, or waste leachate using the TCLP.

Generators who determine that their listed waste meets the applicable treatment standards must certify to this determination and notify the treatment, storage, or land disposal facility that receives the waste (40 CFR 268.7(a)(3)). Notification to the receiving facility must be made with the initial shipment of waste and must include the following information:

- EPA Hazardous Waste Number;
- Certification that the waste delivered to a disposal facility meets the treatment standard, and that the information included in the notice is true, accurate, and complete;
- Waste constituents that will be monitored for compliance if monitoring will not include all regulated constituents, for wastes F001-F005, F039, D001, D002, and D012-D043;
- Whether the waste is a non-wastewater or wastewater;
- The subcategory of the waste (e.g., ''D003 reactive cyanide''), if applicable;
- Manifest number; and,
- Waste analysis data (if available).

If a generator determines that a waste that previously exhibited a characteristic is no longer hazardous, or is subject to an exclusion from the definition of hazardous waste, a one-time notification and certification must be place in the generator's files (40 CFR 268.7(a)(7) or 268.9).

Generators who determine that their waste does not meet the applicable treatment standards must ensure that this waste meets the applicable standards prior to disposal. These generators may treat (or store) their prohibited wastes on-site for 90 days or less in qualified tanks, containers (40 CFR 262.34), or containment buildings (40 CFR 268.50), and/or send their wastes off-site for treatment.[20] When prohibited listed wastes are sent off-site, generators must notify the treatment facility of the appropriate treatment standards (40 CFR 268.7(a)(2)). This notification must be made with the initial shipment of waste and must include the following information:

- EPA Hazardous Waste Number;
- Waste constituents that the treater will monitor if monitoring will not include all regulated constituents, for wastes F001–F005, F039, D001, D002, and D012–D043;
- Whether the waste is a non-wastewater or wastewater;
- The subcategory of the waste (e.g., ''D003 reactive cyanide''), if applicable;
- Manifest number; and,
- Specified information for hazardous debris.

Generators whose wastes are subject to an exemption such as a case-by-case extension under 40 CFR 268.5, an exemption under 40 CFR 268.6 (a no-migration variance), or a nationwide capacity variance under 40 CFR 268, Subpart C must also notify the land disposal facility of the exemption. In addition, records of all notices, certifications, demonstrations, waste analysis data, process knowledge determinations, and other documentation produced pursuant to 40 CFR Part 268 must be maintained by the generator for at least three years from the date when the initial waste shipment was sent to on-site or off-site treatment, storage, or disposal (40 CFR 268.7(a)(8)).

Determinations by Treaters and Disposers

Owner/operators of treatment facilities that receive wastes that do not meet the treatment standards are responsible for treating the wastes to the applicable treatment standards or by the specified technology(ies). In addition, the owner/operators of treatment facilities must determine whether the wastes meet the applicable treatment standards or prohibition levels by testing:

(1) The treatment residues, or an extract of such residues using the TCLP, for wastes with treatment standards expressed as concentrations in the waste extract (40 CFR 268.40); and.

(2) The treated residues (not an extract of the treated residues) for wastes with

1996, and a second supplemental proposed rule signed April 18, 1997.

[20] Non-wastewater residues (e.g., slag) that result from high temperature metals recovery that are excluded from the definition of hazardous waste by meeting the conditions of 40 CFR 261.3(c)(2)(ii)(C), and hazardous debris that is excluded from the definition of hazardous waste in 40 CFR 261.3(f) have reduced LDR notification requirements. Specifically, these wastes, and characteristic hazardous wastes that are rendered non-hazardous, do not require a notification and certification accompanying each shipment. Instead, they may be sent to an AEA-licensed facility with a one-time notification and certification sent to the EPA Region or authorized State.

treatment standards expressed as concentrations in the waste extract (40 CFR 268.40).

This testing should be done at the frequency established in the facility's waste analysis plan. Owner/operators of treatment facilities, however, do not need to test the treated residues or an extract of the residues if the treatment standard is a specified-technology (i.e., a technology specified in 40 CFR 268.40 or 268.45, Table 1.—Alternative Treatment Standards for Hazardous Debris).

Owner/operators of land disposal facilities under the LDRs are responsible for ensuring that only waste meeting the treatment standards (i.e., wastes not prohibited from disposal or wastes that are subject to an exemption or variance) is land disposed. Like a treatment facility, a disposal facility must test a treatment residue or an extract of the treatment residue, except where the treatment standard is a specified technology.

Owner/operators must periodically test wastes received at the facility for disposal (i.e., independent corroborative testing) as specified in the waste analysis plan to ensure the treatment has been successful and the waste meets EPA treatment standards, except where the treatment standard is expressed as a technology.[21] The results of any waste analyses are placed in a TSDF's operating records along with a copy of all certifications and notices (40 CFR 264.73 or 40 CFR 265.73).[22]

Mixed Waste Under the LDRs

As clarified in the Land Disposal Restrictions rule published on June 1, 1990 (see EPA's ''Third Third rule,'' 55 FR 22669, June 1, 1990), the frequency of testing, such as corroborative testing for treatment and disposal facilities, should be determined on a case-by-case basis and specified in the RCRA permit. This flexibility is necessary because of the variability of waste types that may be encountered. Mixed waste is unique for its radioactive/hazardous composition and dual management requirements. Each sampling or analytical event involving mixed waste may result in an incremental exposure to radiation, and EPA's responsibility to protect human health and the environment must show due regard for minimizing this unique risk. These are factors which should be considered in implementing the flexible approach to determining testing frequency spelled out in the Third Third Rule language. This flexible approach encourages reduction in testing where there is little or no variation in the process that generates the waste, or in the treatment process that treats the waste, and an initial analysis of the waste is available. Also, the approach may apply to mixed wastes shipped to off-site facilities, where redundant testing is minimized by placing greater reliance on the characterization developed and certified by earlier generators and treatment facilities. On the other hand, where waste composition is not well-known, testing frequency may be increased. Waste analysis plan conditions in the permits of mixed waste facilities should reflect these principles.

Revised Treatment Standards for Solvent Wastes

EPA promulgated revised treatment standards for wastewater and non-wastewater spent solvent wastes (F001–F005) in 57 FR 37194, August 18, 1992. The revision essentially converts the treatment standards for the organic spent solvent waste constituents (F001–F005) from TCLP based to total waste constituent concentration based. This conversion of the spent solvent treatment standards is particularly advantageous to mixed waste generators, since the entire waste stream or treatment residual must be analyzed (instead of a waste or treatment residual extract). This holds true for other mixed waste streams where the hazardous component is measured using a total waste analysis. As discussed in Section IV of this guidance, total constituent analysis has several advantages over the use of the TCLP for high activity waste streams.

EPA and NRC are aware of potential hazards attributable to testing hazardous waste. Moreover, EPA and NRC recognize that the radioactive component of mixed waste may pose additional hazards to laboratory personnel, inspectors, and others who may be exposed during sampling and analysis. All sampling should be conducted in accordance with procedures that minimize exposure to radiation and ensure personnel safety. Further, testing should be conducted in laboratories licensed by NRC or the appropriate NRC Agreement State authority. EPA and NRC believe that a combination of common sense, modified sampling procedures, and cooperation between State and Federal regulatory agencies will minimize any hazards associated with sampling and testing mixed waste.

Note: Section V, ''Determinations under the Land Disposal Restrictions (LDRs)'' and the following flow charts represent a brief summary of the Land Disposal Restriction Regulations. They are not meant to be a complete or detailed description of all applicable LDR regulations. For more information concerning the specific requirements, consult the **Federal Registers** cited in the document and the Code of Federal Regulations, Title 40 Parts 124, and 260 through 271.

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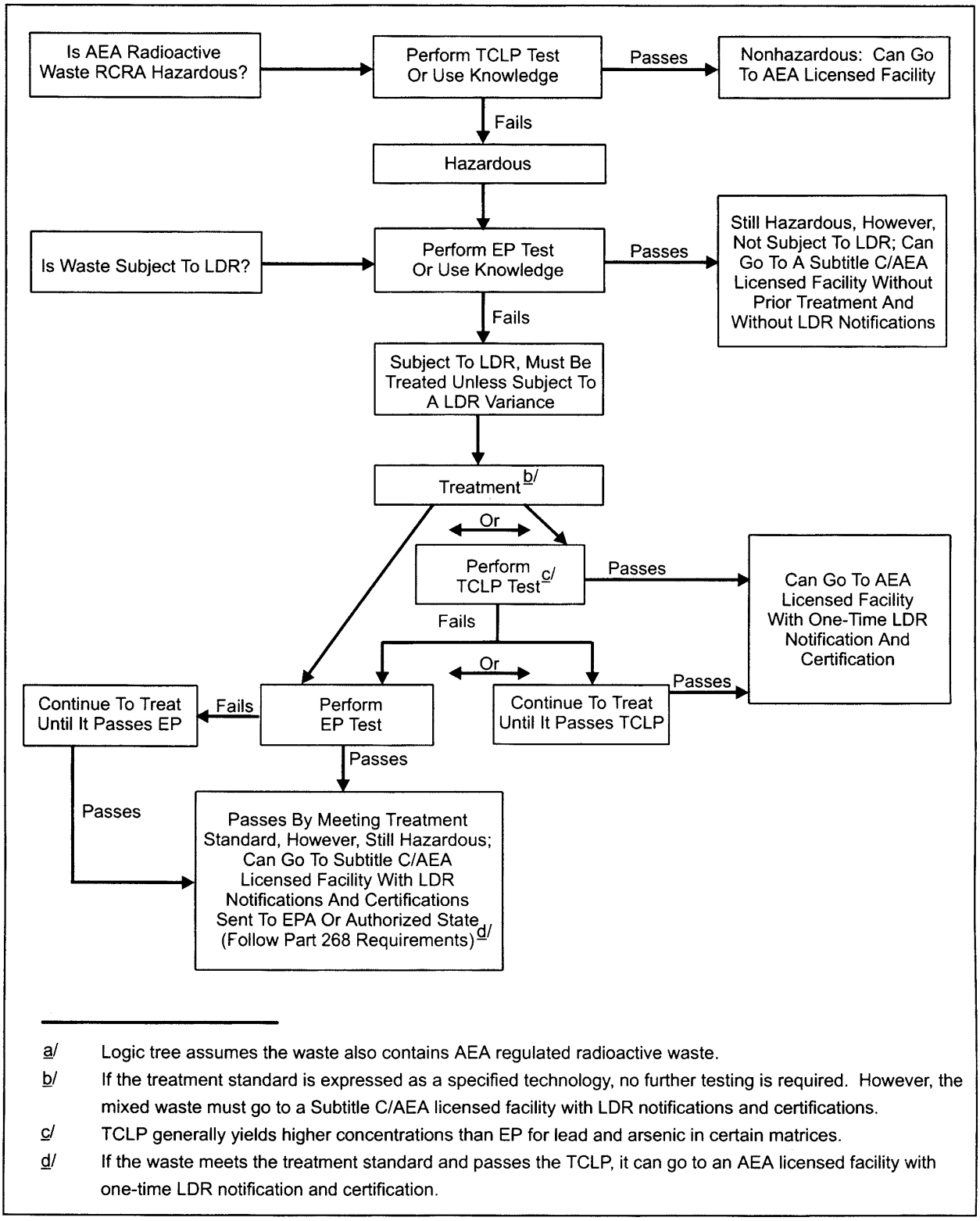
[21] Note that verification testing is a means to verify that the wastes received match the waste description on the manifest, which is required under 40 CFR 264.13 and 40 CFR 265.13(c). The main objective of corroborative testing is to provide an independent verification that a waste meets the LDR treatment standard.

[22] Land disposal facilities must maintain a copy of all LDR notices and certifications transmitted from generators and treaters (40 CFR 268.7(c)).

FIGURE ONE: TESTING REQUIREMENTS FOR CHARACTERISTIC LEAD AND ARSENIC NONWASTEWATERS ONLY[a/]



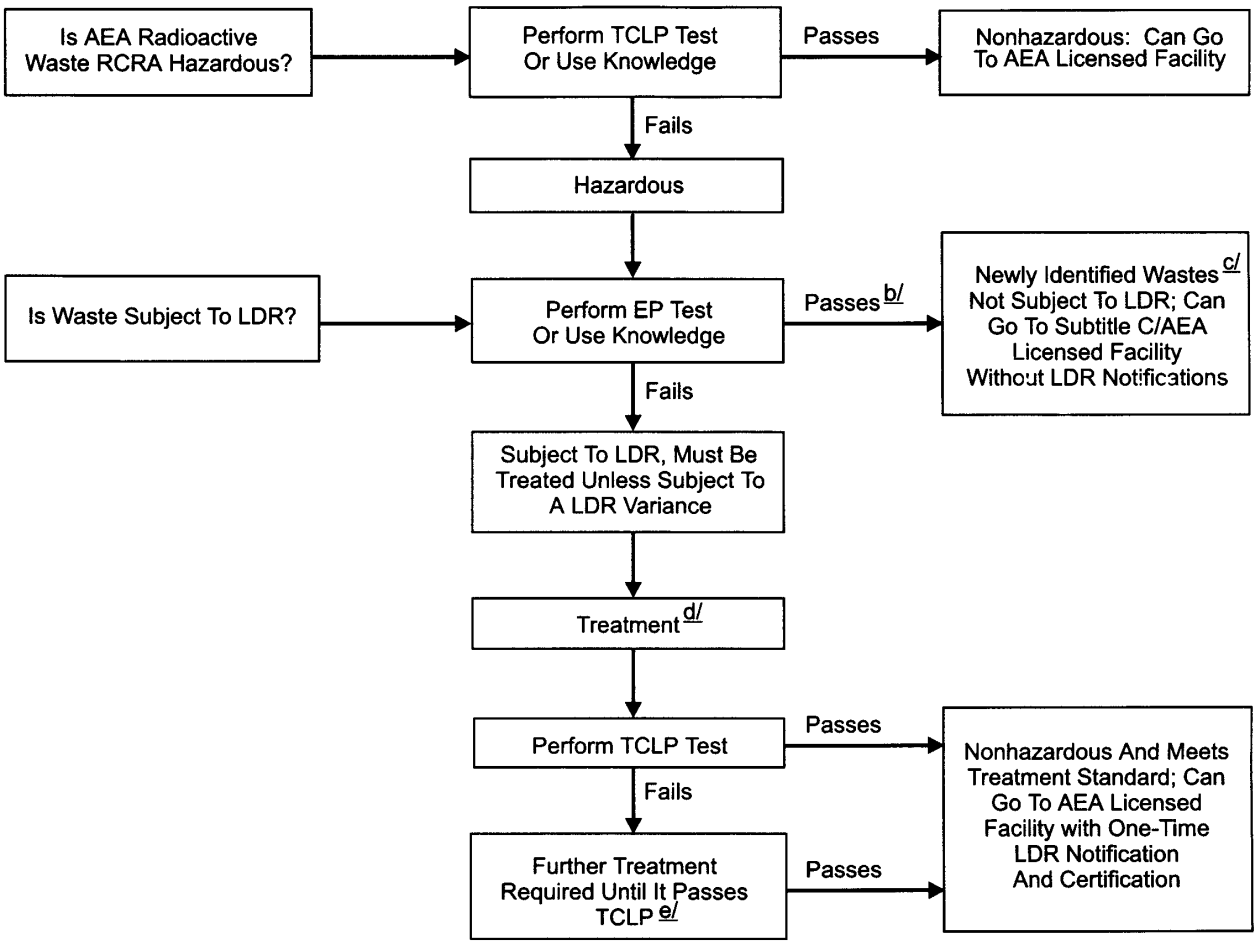
a/ Logic tree assumes the waste also contains AEA regulated radioactive waste.

b/ If the treatment standard is expressed as a specified technology, no further testing is required. However, the mixed waste must go to a Subtitle C/AEA licensed facility with LDR notifications and certifications.

c/ TCLP generally yields higher concentrations than EP for lead and arsenic in certain matrices.

d/ If the waste meets the treatment standard and passes the TCLP, it can go to an AEA licensed facility with one-time LDR notification and certification.

FIGURE TWO: TESTING REQUIREMENTS FOR ALL OTHER CHARACTERISTIC METALS[a/]



a/ Logic tree assumes the waste also contains AEA regulated radioactive waste.

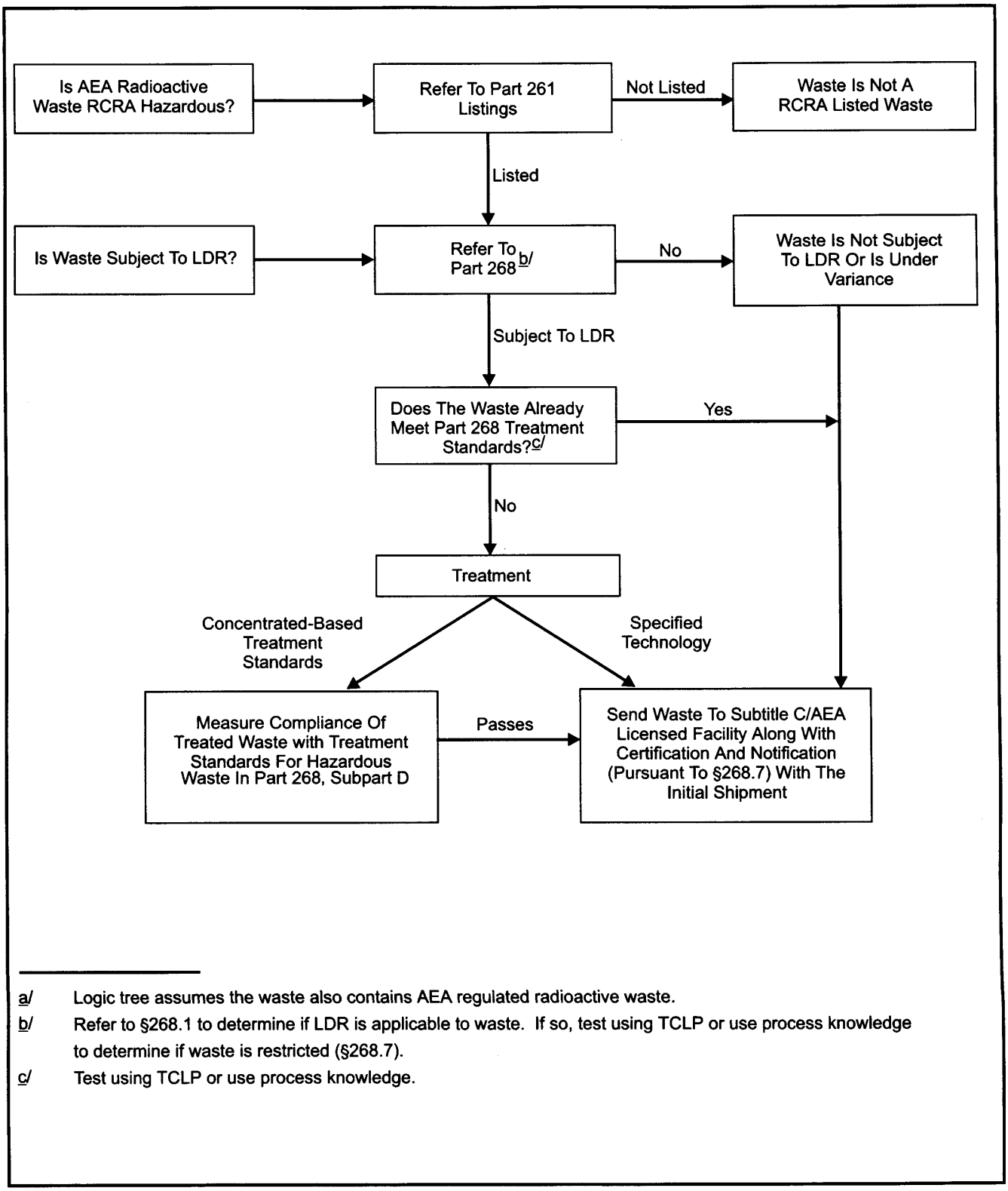
b/ This should be rare, since the two tests usually yield similar results.

c/ Wastes exhibiting the toxicity characteristic but not the EP are newly identified wastes and, therefore, are not subject to the land disposal restrictions at this time.

d/ If the treatment standard is expressed as a specified technology, no further testing is required. However, the mixed waste must go to a Subtitle C/AEA licensed facility with LDR notifications and certifications.

e/ Selenium is the one exception because it has a treatment standard slightly above the characteristic level.

FIGURE THREE: TESTING REQUIREMENTS FOR RCRA LISTED HAZARDOUS WASTES ONLY [a/]

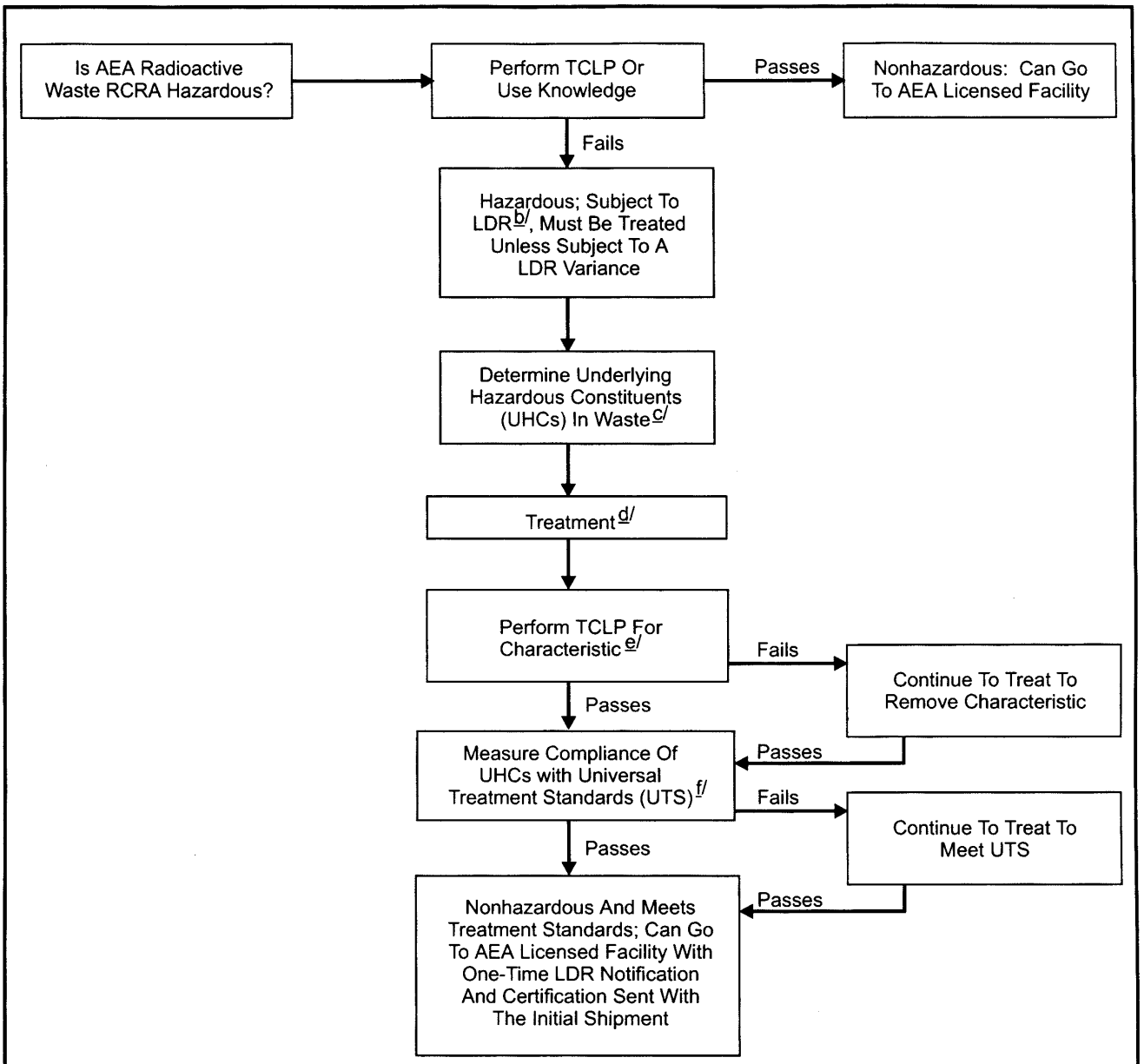


a/ Logic tree assumes the waste also contains AEA regulated radioactive waste.

b/ Refer to §268.1 to determine if LDR is applicable to waste. If so, test using TCLP or use process knowledge to determine if waste is restricted (§268.7).

c/ Test using TCLP or use process knowledge.

FIGURE FOUR: ORGANIC TOXICITY CHARACTERISTIC (TC) WASTES AND PESTICIDE WASTES[a/]



a/ Logic tree assumes the waste also contains AEA regulated radioactive waste.

b/ Restriction applies to TC organic and pesticide wastes managed in non-CWA/non-CWA equivalent/ non-Class I SDWA systems only.

c/ Testing or knowledge of waste may be used. A UHC is any constituent listed in §268.48 Table UTS, except zinc, that can reasonable be expected to be present at the point of generation of the hazardous waste, at a concentration above the constituent-specific UTS treatment standard.

d/ If the treatment standard is expressed as a specified technology, no further testing is required. However, the mixed waste must go to a Subtitle C/AEA facility with LDR notifications and certifications.

e/ Refer to the table "Treatment Standards for Hazardous Wastes" in 40 CFR Part 268, Subpart D.

f/ Compliance should be measured based on the appropriate testing protocols (see SW-846).

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Appendix A—RCRA Regulations That Require Specific EPA Test Methods

The use of an SW–846 method is mandatory for the following nine Resource Conservation and Recovery Act (RCRA) applications contained in 40 CFR Parts 260 through 270:

- Section 260.22(d)(1)(I)—Submission of data in support of petitions to exclude a waste produced at a particular facility (i.e., delisting petitions);
- Section 261.22(a)(1) and (2)—Evaluations of waste against the corrosivity characteristic;
- Section 261.24(a)—Leaching procedure for evaluation of waste against the toxicity characteristic;
- Section 261.35(b)(2)(iii)(A)—Evaluation of rinsates from wood preserving cleaning processes;
- Sections 264.190(a), 264.314(c), 265.190(a), and 265.314(d)—Evaluation of waste to determine if free liquid is a component of the waste;
- Sections 264.1034(d)(1)(iii) and 265.1034(d)(1)(iii)—Evaluation of organic emissions from process vents;
- Sections 264.1063(d)(2) and 265.1063(d)(2)—Evaluation of organic emissions from equipment leaks;
- Section 266.106(a)—Evaluation of metals from boilers and furnaces;
- Sections 266.112(b)(1) and (2)(I)—Certain analyses in support of exclusion from the definition of a hazardous waste for a residue which was derived from burning hazardous waste in boilers and industrial furnaces;
- Sections 268.7(a), 268.40(a), (b), and (f), 268.41(a), 268.43(a)—Leaching procedure for evaluation of waste to determine compliance with land disposal treatment standards;
- Sections § 270.19(c)(1)(iii) and (iv), and 270.62(b)(2)(I)(C) and (D)—Analysis and approximate quantification of the hazardous constituents identified in the waste prior to conducting a trial burn in support of an application for a hazardous waste incineration permit; and
- Sections 270.22(a)(2)(ii)(B) and 270.66(c)(2)(I) and (ii)—Analysis conducted in support of a destruction and removal efficiency (DRE) trial burn waiver for boilers and industrial furnaces burning low risk wastes, and analysis and approximate quantification conducted for a trial burn in support of an application for a permit to burn hazardous waste in a boiler and industrial furnace.

APPENDIX B.—STATES AND TERRITORIES WITH MIXED WASTE AUTHORIZATION

[As of June 30, 1997]

State/territory	FR date	Effective date	FR cite
Colorado	10/24/86	11/7/86	51 FR 37729.
Tennessee	6/12/87	8/11/87	52 FR 22443.
S. Carolina	7/15/87	9/13/87	52 FR 26476.
Washington	9/22/87	11/23/87	52 FR 35556
Georgia	7/28/88	9/26/88	53 FR 28383.
Nebraska	10/4/88	12/3/88	53 FR 38950.
Kentucky	10/20/88	12/19/88	53 FR 41164.
Utah	2/21/89	3/7/89	54 FR 7417.
Minnesota	4/24/89	6/23/89	54 FR 16361.
Ohio	6/28/89	6/30/89	54 FR 27170.
Guam	8/11/89	10/10/89	54 FR 32973.
N. Carolina	9/22/89	11/21/89	54 FR 38993.
Michigan	11/24/89	12/26/89	54 FR 48608.
Texas	3/1/90	3/15/90	55 FR 7318.
New York	3/6/90	5/7/90	55 FR 7896.
Idaho	3/26/90	4/9/90	55 FR 11015.
Illinois	3/1/90	4/30/90	55 FR 7320.
Arkansas	3/27/90	5/29/90	55 FR 11192.
Oregon	3/30/90	5/29/90	55 FR 11909.
Kansas	4/24/90	6/25/90	55 FR 17273.
N. Dakota	6/25/90	8/24/90	55 FR 25836.
New Mexico	7/11/90	7/25/90	55 FR 28397.
Oklahoma	9/26/90	11/27/90	55 FR 39274.
Connecticut	12/17/90	12/31/90	55 FR 51707.
Florida	12/14/90	2/12/91	55 FR 51416.
Mississippi	3/29/91	5/28/91	56 FR 13079.
S. Dakota	4/17/91	6/17/91	56 FR 15503.
Indiana	7/30/91	9/30/91	56 FR 41959.
Louisiana	8/26/91	10/26/91	56 FR 41959.
Wisconsin	4/24/92	4/24/92	57 FR 15092.
Nevada	4/29/92	6/29/92	57 FR 18083.
California	7/23/92	8/1/92	57 FR 32725.
Arizona	11/23/92	1/22/93	57 FR 54932.
Missouri	1/11/93	3/12/93	58 FR 3497.
Alabama	3/17/93	5/17/93	58 FR 14319.
Vermont	6/7/93	8/6/93	58 FR 31911.
Montana	1/19/94	3/21/94	59 FR 2752.
New Hampshire	11/14/94	1/13/95	59 FR 56397.
Wyoming	10/04/95	10/18/95	60 FR 51925.
Delaware	8/8/96	10/7/96	61 FR 41345.
Total: 39 States and 1 Territory.			

Appendix C: Testing Reference Documents

The following references provide information on approved methods for testing hazardous waste samples:

American Public Health Association, *Standard Methods for the Examination of Water and Wastewater, 17th Edition.* 1989. Available from the Water Pollution Control Federation, Washington, D.C., #S0037.

U.S. Environmental Protection Agency, *Design and Development of a Hazardous Waste Reactivity Testing Protocol.* EPA Document No. 600/2–84–057, February 1984.

U.S. Environmental Protection Agency, *Methods for Chemical Analysis of Water and Waste.* EPA–6001114–79–020. Washington, D.C., 1983.

U.S. Environmental Protection Agency, *Test Methods for Evaluating Solid Waste, Physical/Chemical Methods.* SW–846. Third Edition (1986) as amended. Avail able from the Government Printing Office, by subscription, 955–001–00000–1, or from the National Technical Information Service, PB88–239–223. Washington, D.C., January, 1995.

U.S. Environmental Protection Agency, *The New Toxicity Characteristic Rule: Information and Tips for Generators.* Office of Solid Waste, 530/SW–90–028, April, 1990.

U.S. Environmental Protection Agency, ORD, and U.S. Department of Energy, *Characterizing Heterogenous Wastes: Methods and Recommendations.* EPA/600/R-92/033, February 1992.

U.S. Environmental Protection Agency, Office of Solid Waste and Emergency Response. ''Joint EPA/NRC Guidance on the Definition and Identification of Commercial Mixed Low-Level Radioactive and Hazardous Waste,'' Directive No. 9432–00–2, October 4, 1989.

Appendix D: List of Regulations

Environmental Protection Agency General Regulations for Hazardous Waste Management, 40 CFR Part 260.

Environmental Protection Agency Regulations for Identifying Hazardous Waste, 40 CFR Part 261.

Environmental Protection Agency Regulations for Hazardous Waste Generators, 40 CFR Part 262.

Environmental Protection Agency Standards for Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities, 40 CFR Part 264.

Environmental Protection Agency Interim Status Standards for Owners and Operators of Hazardous Waste Facilities, 40 CFR Part 265.

Environmental Protection Agency Regulations on Land Disposal Restrictions, 40 CFR Part 268.

Nuclear Regulatory Commission Regulations—Standards for Protection Against Radiation, 10 CFR Part 20.

Nuclear Regulatory Commission Regulations—Rules of General Applicability to Domestic Licensing of Byproduct Material, 10 CFR Part 30.

Nuclear Regulatory Commission Regulations—Domestic Licensing of Source Material, 10 CFR Part 40.

Nuclear Regulatory Commission Regulations—Domestic Licensing of Production and Utilization Facilities, 10 CFR Part 50.

Nuclear Regulatory Commission Regulations—Licensing Requirements for Land Disposal of Radioactive Waste, 10 CFR Part 61.

Nuclear Regulatory Commission Regulations—Domestic Licensing of Special Nuclear Material, 10 CFR Part 70.

[FR Doc. 97–30528 Filed 11–19–97; 8:45 am]

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PRESIDENT'S COMMISSION ON CRITICAL INFRASTRUCTURE PROTECTION TRANSITION OFFICE

Advisory Committee for the President's Commission on Critical Infrastructure Protection; Meeting

Time & Date: 9:00 a.m.–6:00 p.m., Wednesday, December 3, 1997.

Action: Notice of Meeting.

Summary: Pursuant to the provisions of the Federal Advisory Committee Act (Pub.L. 92–463, 86 Stat. 770), notice is hereby given for the second meeting of the Advisory Committee on the President's Commission on Critical Infrastructure Protection.

Address: The Madison Hotel, 15th and M St., NW, Washington, D.C. 20005. Public seating is limited and is available on a first-come, first-served basis. This facility is accessible to persons with disabilities.

For Further Information Contact: Carla Sims, Public Affairs Officer, (703) 696–9395, comments@pccip.gov. Hearing-impaired individuals are advised to contact the Virginia Relay Center (Text Telephone (800) 828–1120 or Voice (800) 828–1140), or their local relay system.

Supplementary Information: The Advisory Committee was established by the President to provide expert advice to the Commission as it developed a comprehensive national policy and implementation strategy for protecting the nation's critical infrastructures. The Committee is co-chaired by the Honorable Jamie Gorelick, Vice Chair of Fannie Mae, and the Honorable Sam Nunn, Partner with the law firm of King & Spaulding. The Committee currently consists of 14 members representing various industry sectors.

Purpose of the Meeting: This is the second advisory meeting of the Committee. The Committee will review and discuss the recommendations contained in the Commission's report to the President, ''Critical Foundations: Protecting America's Infrastructure's.''

Tentative Agenda: The Advisory Committee meeting will review and discuss the recommendations contained in the Commission's report. The unclassified report is available electronically from the Commission's site on the World Wide Web (http://www.pccip.gov/).

Public Participation: The morning session of the meeting will be open to the public. Written comments may be filed with the Commission after the meeting. Written comments may be given to the Designated Federal Officer after the conclusion of the open meeting; mailed to the Commission at P.O. Box 46258, Washington, D.C. 20050–6258; or emailed to comments@pccip.gov/.

Closed Meeting Deliberations: In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463 [5 U.S.C. App II, (1982)], it has been determined that the afternoon session concerns matters listed in 5 U.S.C. 552b (c)(1)(1982). Therefore, the afternoon meeting will be closed to the public in order for the committee to discuss classified material.

Robert E. Giovagnoni,

General Counsel, President's Commission on Critical Infrastructure Protection Transition Office.

[FR Doc. 97–30501 Filed 11–19–97; 8:45 am]

BILLING CODE 3110–$$–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Meeting of the Advisory Committee for Trade Policy and Negotiations

AGENCY: Office of the United States Trade Representative.

ACTION: Notice that the December 4, 1997, meeting of the Advisory Committee for Trade Policy and Negotiations will be held from 10:00 a.m. to 2:00 p.m. The meeting will be closed to the public from 10:00 a.m. to 1:30 p.m. and open to the public from 1:30 p.m. to 2:00 p.m.

SUMMARY: The Advisory Committee for Trade Policy and Negotiation will hold a meeting on December 4, 1997 from 10:00 a.m. to 2:00 p.m. The meeting will be closed to the public from 10:00 a.m. to 1:30 p.m. The meeting will include a review and discussion of current issues which influence U.S. trade policy. Pursuant to Section 2155(f)(2) of Title 19 of the United States Code, I have determined that this meeting will be concerned with matters the disclosure of which would seriously compromise the development by the United States Government of trade policy, priorities, negotiating objectives or bargaining positions with respect to the operation of any trade agreement and other matters arising in connection with the development, implementation and administration of the trade policy of the United States. The meeting will be open

to the public and press from 1:30 p.m. to 2:00 p.m. when trade policy issues will be discussed. Attendance during this part of the meeting is for observation only. Individuals who are not members of the committee will not be invited to comment.

DATES: The meeting is scheduled for December 4, 1997, unless otherwise notified.

ADDRESSES: The meeting will be held at the Madison Hotel in the Executive Chambers, located at 15th and M Streets, Washington, D.C., unless otherwise notified.

FOR FURTHER INFORMATION CONTACT: Bill Daley, Office of the United States Trade Representative, (202) 395–6120.

Charlene Barshefsky,

United States Trade Representative.

[FR Doc. 97–30559 Filed 11–19–97; 8:45 am]

BILLING CODE 3190–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Invitation for Comment on APEC Multilateral Negotiations Regarding a Mutual Recognition Agreement for Telecommunications Equipment

AGENCY: Office of the United States Trade Representative.

ACTION: Notice and request for comments.

SUMMARY: The Trade Policy Staff Committee (TPSC) is inviting interested persons to submit written comments with respect to the negotiation in the Asia-Pacific Economic Cooperation (APEC) of a Mutual Recognition Agreement (MRA) on telecommunications equipment, and, in particular, with respect to the potential for such an agreement to remove important non-tariff barriers affecting trade in telecommunications and information technology products. Comments received will be considered by the Executive Branch in formulating U.S. positions and objectives for negotiation of such an MRA, in particular as part of the effort by the APEC Telecom Working Group's MRA Task Force to conclude the text of such an agreement by the June 1998 meeting of APEC Telecommunications Ministers.

DATES: Comments are due by noon, December 15, 1997.

ADDRESSES: Comments should be addressed to Gloria Blue, Executive Secretary, TPSC, ATTN: APEC Telecom MRA Comments, Office of the U.S. Trade Representative, Room 503, 600 17th Street, NW., Washington, D.C. 20508.

FOR FURTHER INFORMATION CONTACT: William Corbett, Office of Industry Affairs, USTR, (202–395–9586); or William Busis, Office of General Counsel, USTR (202–395–3150).

SUPPLEMENTARY INFORMATION: APEC consists of eighteen member economies: Australia, Brunei, Canada, Chile, China, Chinese Taipei, Hong Kong China, Indonesia, Japan, Korea, Malaysia, Mexico, New Zealand, Papua New Guinea, Philippines, Singapore, Thailand and the United States. The APEC Telecommunications Working Group is a biannual forum in which telecommunications officials of APEC economies undertake cooperative endeavors to liberalize trade in telecommunications goods and services; to facilitate private sector interaction with telecommunications authorities on policy and business issues; to coordinate efforts to promote human resources development in the regional telecommunications industry; and to improve regional telecommunications infrastructure.

An MRA potentially would facilitate trade in a significant portion of telecommunications and information equipment goods among members of APEC, thereby enhancing the gains we can expect from the Information Technology Agreement. It would allow exporters to test (''phase one'') and certify (''phase two'') equipment to an importing economy's mandatory technical requirements. It is potentially a useful means to cope with ever-shortening product life cycles and to reduce the redundancy of steps necessary to satisfy importing countries' approval processes. The WTO Agreement on Technical Barriers to Trade encourages members to enter into Mutual Recognition Agreements that ''give mutual satisfaction regarding their potential for facilitating trade in the products concerned.'' An MRA does not require harmonization of mandatory technical requirements, albeit a possible future result of MRA processes is harmonization of conformity assessment and technical requirements, along with greater voluntary reliance on manufacturer's self-declarations, where this is not already the case.

Background

At the 1995 Osaka APEC Leader's Meeting, Leaders agreed to develop and begin to implement, on a voluntary basis and by the end of 1997, a model mutual recognition arrangement for certification of telecommunications equipment to the mandatory technical regulations of importing economies. The APEC Telecommunications Working Group (the ''TEL WG'') in September 1997 reached agreement on a voluntary framework for such MRAs. The TEL WG also reached agreement on improvements to the existing APEC guidelines for regional harmonization of equipment certification, which are referenced by the framework document.

Based on this work, a Telecom MRA Task Force subsequently met to initiate work on a Mutual Recognition Agreement and annexed Phase Agreements, producing a bracketed text for further consideration. The Task Force agreed that its goal would be to complete work on the texts of an APEC Telecommunications Mutual Recognition Agreement and annexed Phase Agreements by the third meeting of the APEC Telecommunications Ministers, scheduled for June 1–5, 1998 in Singapore.

The Telecom MRA Task Force has agreed that an MRA should cover any equipment that is subject to member economies' regulatory requirements for terminal attachment (wired and wireless) or other telecommunications regulation. For such equipment, an MRA should cover member economies' regulatory requirements for electromagnetic compatibility and product safety. The framework, improved guidelines and bracketed MRA text are available for inspection at the USTR reading room.

Invitation for Comments

The interagency TPSC led by USTR is in the process of preparing negotiating positions for upcoming APEC Telecom MRA Task Force meetings. Interested U.S. persons are invited to submit comments, by noon, December 15, 1997, on what should be the U.S. goals and objectives for an APEC MRA on telecommunications equipment. We are requesting this advice pursuant to 19 U.S.C. 2155.

Persons submitting written comments should provide a statement, in twenty copies, by noon, December 15, 1997, to Gloria Blue, Executive Secretary, TPSC, ATTN: APEC Telecom MRA Comments, Office of the U.S. Trade Representative, Room 503, 600 17th Street, NW., Washington, D.C. 20508. Non-confidential information received will be available for public inspection by appointment in the USTR Reading Room, Room 101, Monday through Friday, 9:30 a.m. to 12:00 noon and 1:00 p.m. to 4:00 p.m. For an appointment call Brenda Webb on 202–395–6186. Business confidential information will be subject to the requirements of 15 CFR 2003.6. Any business confidential material must be clearly marked as such on the cover letter or cover page and

each succeeding page, and must be accompanied by a non-confidential summary thereof.

Frederick L. Montgomery,

Chairman, Trade Policy Staff Committee.

[FR Doc. 97–30420 Filed 11–19–97; 8:45 am]

BILLING CODE 3190–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Under OMB Review

AGENCY: Department of Transportation, Federal Aviation Administration (DOT/FAA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3401 *et seq.*) this notice announces that the information collection request described below has been forwarded to the Office of Management and Budget (OMB) for review. The FAA is requesting an immediate emergency clearance in accordance with 5 CFR § 1320.13. The following information describes the nature of the information collection and its expected burden.

DATES: Submit any comments to OMB and FAA by January 20, 1998.

SUPPLEMENTARY INFORMATION:

Title: Pilot Medical Certification Customer Service Survey.

Need: This information is being conducted to comply with the Executive Order 12862, Setting Customer Service Standards. The information will be used to evaluate agency performance in the area of pilot medical certification. The completion of this form is voluntary and the information collection will be conducted anonymously.

Respondents: 48,000 pilots.

Frequency: Annually.

Burden: 2400 hours based on a 30 per cent return rate of the 48,000 respondents at 10 minutes each.

FOR FURTHER INFORMATION: or to obtain a copy of the request for clearance submitted to OMB, you may contact Ms. Judith Street at the: Federal Aviation Administration, Corporate Information Division, ABC–100, 800 Independence Avenue, SW, Washington, DC 20591.

Comments may be submitted to the agency at the address above and to: Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10202, Attention FAA Desk Officer, 725 17th Street, NW, Washington, DC 20503.

Issued in Washington, DC on November 14, 1997.

Patricia W. Carter,

Acting Manager, Corporate Information Division, ABC–100.

[FR Doc. 97–30497 Filed 11–19–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA, Inc. Special Committee 159; Minimum Operational Performance Standards for Airborne Navigation Equipment Using Global Positioning System (GPS)

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 159 meeting to be held December 8–12, 1997, starting at 9:00 a.m. The meeting will be held at RTCA, Inc., 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC, 20036.

The agenda will be as follows:

Specific Working Group (WG) Sessions: December 8–9: WG–4A, Precision Landing Guidance (LAAS CAT I/II/III); December 10: WG–4A, Precision Landing Guidance (LAAS CAT I/II/III); WG–3A, GPS/Inertial (Meeting will start at 1:00 p.m. to discuss the reformulation of WG–3A); December 11: WG–2, WAAS, and WG–2A, GPS/GLONASS; WG–4B, Airport Surface Surveillance.

Plenary Session, December 12: (1) Chairman's Introductory Remarks; (2) Review and Approval of Summary of the Previous Meeting; (3) Review WG Progress and Identify Issues for Resolution: a. GPS/WAAS (WG–2); b. GPS/GLONASS (WG–2A); c. GPS/Precision Landing Guidance and Airport Surface Surveillance (WG–4); (4) Review of EUROCAE Activities; (5) Review Proposed Draft MASPS and LAAS CAT I/II/III and Interface Control Document for LAAS; (6) Assignment/Review of Future Work; (7) Other Business; (8) Date and Place of Next Meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC, 20036; (202) 833–9339 (phone); (202) 833–9434 (fax); or http://www.rtca.org (web site). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on November 13, 1997.

Terry R. Hannah,

Designated Official.

[FR Doc. 97–30493 Filed 11–19–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application to Impose a Passenger Facility Charge (PFC) at Arcata/Eureka Airport (ACV), Eureka, CA and Use the Revenue at ACV, Rohnerville (FOT), Murray Field (EKA) and Kneeland Airports (019)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose a PFC at ACV and use at ACV, FOT, EKA and 019 under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before December 22, 1997.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Airports Division, 15000 Aviation Blvd., Lawndale, CA 90621, or San Francisco Airports District Office, 831 Mitten Road, Room 210, Burlingame, CA 94010–1303. In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Don Raffaelli, Acting Public Works Director, County of Humboldt, at the following address: 1106 Second Street, Arcata, CA 95521. Air carriers and foreign air carriers may submit copies of written comments previously provided to the County of Humboldt under section 158.23 of FAR part 158.

FOR FURTHER INFORMATION CONTACT: Maryls Vandervelde, Airports Program Specialist, Airports District Office, 831 Mitten Road, Room 210, Burlingame, CA 94010–1303, Telephone: (650) 876–2806. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose a PFC at ACV and use the revenue at ACV, FOT, EKA and 019 under the provisions of the Aviation Safety and

Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On October 24, 1997, the FAA determined that the application to impose and use the revenue from a PFC submitted by the County of Humboldt was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than January 23, 1998. The following is a brief overview of the impose and use application number 97–04–C–00–ACV.

Level of proposed PFC: $3.00.

Charge effective date: March 1, 1998.

Estimated charge expiration date: June 30, 2004.

Total estimated PFC revenue: $1,782,300.

Brief description of impose and use projects at ACV: Emergency Safety Area Erosion Control, Fire Protection System Replacement, Taxiway ''A'' Overlay, Fire Truck Replacement, T-Hanger Taxiway Construction, Boarding Assistance Device, Property Purchase, Aircraft Rescue and Firefighting (ARFF) Building Improvements and Ramp Area Extension.

Brief description of use project at FOT: Pavement Rehabilitation of Taxiway, Runway and Aprons and Entrance Road Reconstruction and Perimeter Fencing.

Brief description of use project at 019: Airport Rehabilitation Including Reconstruction of Airport Runway, Overlay of Existing Aircraft Parking and Construction of Additional Parking Ramp.

Brief description of use project at EKA: Pavement Overlay of Runway 11–29, its Parallel Taxiway and the Main Aircraft Parking Apron.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: None.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Division located at: Federal Aviation Administration, Airports Division, 15000 Aviation Blvd. Lawndale, CA 90261. In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the County of Humboldt.

Issued in Hawthorne, California, on November 4, 1997.

Herman C. Bliss,

Manager, Airports Division, Western-Pacific Region.

[FR Doc. 97–30494 Filed 11–19–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[FRA Docket No. 87–2, Notice. No. 5]

RIN 2130–AB20

Automatic Train Control and Advanced Civil Speed Enforcement System; Northeast Corridor Railroads

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Proposed order of particular applicability.

SUMMARY: FRA is proposing to issue an order of particular applicability requiring all trains operating on the north end of the Northeast Corridor (NEC) between Boston, Massachusetts and New York, New York, to be controlled by locomotives equipped to respond to a new advanced civil speed enforcement system (ACSES) in addition to the automatic train control (ATC) system that is currently required on the NEC. The proposed order also contains performance standards for the cab signal/ATC and ACSES systems on the NEC. The order would authorize increases in certain maximum authorized train speeds and safety requirements supporting improved rail service.

DATES: Written comments must be received by January 20, 1998. Comments received after the comment period has closed will be considered to the extent possible without incurring additional delay. A request for a public hearing must be received by December 22, 1997.

ADDRESSES: Written comments should be submitted to Ms. Renee Bridgers, Docket Clerk, Office of Chief Counsel, FRA, 400 Seventh Street, S.W., Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT: W.E. Goodman, Staff Director, Signal and Train Control Division, Office of Safety, FRA, 400 Seventh Street, S.W., Washington, D.C., 20590 (telephone (202) 632–3353), or Patricia V. Sun, Office of Chief Counsel, FRA, 400 Seventh Street, S.W., Washington, D.C. 20590 (telephone (202) 632–3183).

SUPPLEMENTARY INFORMATION:

Statutory Authority

FRA has both discrete and plenary legal authority to require that all trains operating on the NEC be equipped with automatic train control devices. FRA has broad legal authority to ''prescribe regulations, and issue orders for every area of railroad safety * * *.'' 49 U.S.C. 20103. Section 20502 of Title 49, United States Code specifically provides that ''[w]hen the Secretary of Transportation decides after an investigation that it is necessary in the public interest, the Secretary may order a railroad carrier to install * * * a signal system that complies with the requirements of the Secretary.'' As originally enacted and prior to formal codification, this provision referred to ''automatic train stop, train control, and/or other similar appliances, methods, and systems intended to promote the safety of railroad operation * * *.'' This authority has been previously invoked to require the installation of signal systems on 49 specific railroads and to require all railroads desiring to operate at high speeds to install signal systems of varying degrees of sophistication consonant with those higher speeds.

Background—Development of the NEC

The National Railroad Passenger Corporation (Amtrak) provides service over the NEC from Washington, D.C., to Boston, Massachusetts. Amtrak owns or dispatches most of the NEC, which it shares with several commuter authorities and freight railroads. Maximum track speeds on certain segments of the NEC south of New York City (the ''South End'') are limited to 125 miles per hour (mph) for Metroliner equipment. Current speeds north of New York City (the ''North End'') range up to 110 mph.

Amtrak is currently undertaking a major improvement project on the NEC, with particular emphasis on completion of electrification, installation of concrete ties and high-speed turnouts, elimination of some remaining highway-rail crossings, and other modifications concentrated between New Haven, Connecticut, and Boston. These improvements are designed to facilitate service utilizing high-speed trainsets (HST's) at speeds up to 150 (mph). Similar service would also be implemented on the south end of the NEC, with the initial increase in maximum speed expected to be from 125 mph to 135 mph. During 1999, Amtrak will begin taking delivery of HST's expected to qualify for operation through curves at higher levels of

unbalance (and thus higher speeds) than conventional trains.

Increases in operating speeds would be accomplished during a period of continued traffic growth. Commuter and intercity trains are expected to increase in number over the next 20 years. Local freight traffic is expected to increase on the North End, and recent proposals for the sale of Consolidated Rail Corporation have given rise to the possibility that freight operations on the South End, particularly in Maryland, might increase.

In its planning for implementation of high-speed service between New Haven and Boston, FRA recognized that a more secure train control system would be required to address the increased potential for collisions associated with increased traffic density. As planning for South End service growth matures, similar conclusions are likely. Although this proposed order does not address territory owned and dispatched by the MTA Metro-North Railroad between New Rochelle, New York, and New Haven similar concerns may arise in that territory as intercity service increases.

FRA is concerned that planning for high-speed service not occur in isolation from measures that can reasonably address increased traffic densities. Future increases in traffic is one factor that will drive future innovative technology.

Proposed Signal and Train Control Enhancements

Providing signalization for high-speed intercity service will require implementation of an enhanced cab signal/speed control system. The new system must allow for higher train speeds while providing sufficient gradations of intermediate speeds to allow efficient movement of other scheduled trains operating in the conventional speed range. Reasonable interoperability of existing and new on-board equipment is also desirable to provide for the continued use of existing on-board equipment which will be used only at conventional speeds.

Amtrak presently uses a four-aspect continuous cab signal/speed control system. Amtrak proposes to replace this system with a new nine-aspect continuous cab signal/speed control, referred to in this order as ''cab signal/ATC,'' and an intermittent transponder civil speed enforcement system providing for train operations of up to 150 mph; intermediate speeds of 125, 100, 80, 60, 45, and 30 mph; and a positive stop feature. Amtrak calls the new transponder-based portion of this system, which would provide positive stop and civil speed enforcement capability, the ''Advanced Civil Speed Enforcement System'' (ACSES).

9-Aspect Cab Signal System

The cab signal/ATC portion of the new system will employ two carrier frequencies, 100 Hz, compatible with existing equipment, and 250 Hz. Both frequencies will be coded at standard rates of 75, 120, 180, and 270 cycles per minute. Upgraded equipment will be able to take advantage of the 150 mph code rate for maximum authorized speed, the 80 mph code rate for high speed diverging moves, and separate 45/40 and 30 mph speed commands for limited and medium speed turnouts.

Although existing four-aspect equipment will not be able to take advantage of these additional features, it can continue to operate as it does today. Instead of diverging through a high speed turnout at 80 mph, this equipment will diverge at 45 mph (passenger trains) or 40 mph (freight). In addition to the conventional diesel-electric and straight electric trains currently traveling on the NEC, FRA anticipates that new HST's will be used to minimize the run time between Boston, New York, and Washington. The first stage of the installation of the 9-aspect system involves conventional electronic coded track circuits. The next stage involves the conversion of these electronic track circuits for use in electrified territory. No civil speed restrictions will be reflected in this cab signal/ATC system. There will be no positive stop aspect or indication associated with the cab signal/ATC system other than a stop signal displayed at home signal locations. The cab signal/ATC system provides control based on track and route conditions ahead. It will operate as a stand alone system with an interface to the brake valve to enforce speed control.

ACSES

In contrast to the modified cab signal system, the ACSES will provide new safety functions that—with limited exceptions—are not currently provided. For purposes of civil speed control, permanent wayside transponders would be placed in sets (normally two to a set) at convenient, accessible locations in the center of the track approaching speed restriction zones. The transponders would be passive devices requiring no energy source other than that transmitted from a passing train. Each permanent transponder set would contain encoded information about speed restrictions ahead, including: (i) The distance to the beginning of the speed restriction; (ii) the target speed; (iii) the type of speed restriction; (iv) the average grade between the location where the speed reduction must begin and the location where the reduced speed must be reached; (v) the distance to the next permanent transponder set location; and (vi) necessary sync and check bytes to allow for message verification. Since the number of discrete codes available is large, it would be possible to provide speed and distance information for more than one speed restriction at a time.

The two transponders in a set are used to determine which message the train should accept, determined by the direction of the train as follows: the train would receive the appropriate message from the order in which the transponders in the set are read, e.g., if ''A'' is encountered first, the message for movement in the direction from ''A'' to ''B'' would be received; if ''B'' is encountered first, the message for the opposite direction, from ''B'' to ''A,'' will be received.

At distant signals prior to interlocking home signals and control points in high-speed territory, dynamic transponders would be provided. These transponders would communicate the status of the home signal providing for positive stop enforcement.

Each locomotive, power car, and non-powered control car would be equipped with a transmitter/receiver, an antenna mounted under the vehicle, an axle generator (to measure speed and distance traveled), an on-board computer, and an aspect display unit. The vehicle would continuously transmit a signal which, when received by a wayside transponder, would cause the transponder to transmit back its encoded message. The on-board equipment would then decode this message and the on-board computer would calculate the braking distance based on the present speed of the train, the information received from the transponder set, and the standard Amtrak reduction braking curves with a 12.5% safety factor compensated for grade together with an 8-second reaction time. When the train reaches the calculated distance from the speed restriction, an audible alarm would sound and the new speed would be digitally displayed in the cab of the vehicle. The engineer must acknowledge the alarm. If the train is above the speed required by the profile generator inside the on-board computer, the engineer would be required to bring the train down to the required speed. Failure to do so would result in an automatic penalty application of the brakes which can only be released when the train is below the required speed.

The on-board computer would be programmed to calculate speed and braking distance based on the type of equipment it is mounted on. A high performance train, such as a tilt body train, would be allowed to run at a higher speed around a curve than conventional passenger equipment if consistent with allowed unbalance. A safe default speed would be provided in the railroad operating rules in the case of tilt body equipment failure or ACSES failure.

Temporary speed restrictions would be entered into the civil speed enforcement on-board computer at the beginning of the run. Normally the speed restrictions would be entered by a data radio located at strategic entrances and locations along the NEC. In the event that the data radio is inoperative, the engineer would be able to enter the information from the paper Form D he or she receives that lists all temporary speed restrictions.

In the fully deployed system, data radio transmitters would be provided at all interlockings in equipped territory, permitting updating of temporary restrictions and verification that on-board information is complete. Crews would continue to receive paper Form D's, and temporary speed boards would be provided. An alternative approach to enforcement of temporary restrictions has also been posited by Amtrak. Under this approach, portable speed restriction transponder sets would be utilized to enforce temporary speed restrictions. Temporary transponder sets would be placed at braking distance for the worst case trains. All trains operating at maximum authorized speed that encounter a temporary transponder set would immediately begin to reduce to the speed called for on the transponder so distance to go, ruling grade, or distance to the next transponder information will not be necessary. When a temporary transponder set is encountered, it would not reset the ''next transponder location window'' information in the on-board computer, and the on-board equipment would continue to look for the next permanent transponder set. All permanent transponder sets are ''linked'' in that each set identifies the location of the next set in the chain, but temporary transponders are not part of this linkage.

For the immediate future, only some Amtrak power units will respond to all of the new frequencies of the cab signal/ATC system. Those units would receive a maximum 125 mph speed indication where the signal system permits. Recently, Amtrak has indicated that some changes to on-board equipment would be required for other users where Amtrak introduces the high-speed cab signal/ATC array (in particular, use of the 270 pulses per minute at both 100 and 250 Hz as a new 100 mph code and use of 270 pulses per minute at 100 Hz as a code allowing movement over #26.5 turnouts at 60 mph). Although the changes in the cab signal code rates and carrier frequencies form an important backdrop for this proceeding, no approval for these changes is required or implied in this proposed order. At the same time, FRA is conscious that existing requirements for cab signal/ATC are implicated in Amtrak's migration strategy; accordingly, FRA holds open the possibility of resolving any necessary issues in the final order should it become apparent that they are so interrelated as to defy separate resolution. Further, to the extent the proposed changes in code rates and associated arrangements may otherwise be considered material modifications subject to approval under 49 CFR Part 235, FRA proposes to resolve any related issues in this proceeding. (See 49 CFR 235.7(c)(1).)

Improvements that Amtrak would gain with the new systems are:

—Train speeds of up to 150 mph;
—A high speed diverging aspect (80 mph);
—The efficient handling of both high speed and conventional trains;
—New intermediate speeds between 45 mph and 150 mph;
—The capability for headway improvement in congested commuter areas; and
—Practical staging from present wayside and on-board equipment

Commuter and freight railroads would obviously benefit from enhanced safety of Amtrak operations, given the common operating environment. Amtrak's implementation of the 9-aspect cab signal system would provide increased flexibility to schedule high speed intercity service in a way that does not conflict with commuter operations. In addition, as the ACSES is implemented on commuter and freight trains, the safety of those operations would be enhanced, ensuring that those trains do not pass absolute stop signals or operate at excessive speed approaching stations or bridges. To the extent equipment design permits, commuter operators would also be able to take advantage of higher speeds on curves without diminished safety margins if flexibility for operation at higher cant deficiencies contained in FRA's proposed revisions to its Track Safety Standards in 49 CFR Part 213 (62 FR 31638; July 3, 1997) is adopted in the final rule.

Implementation

In order to obtain the maximum benefit from the positive stop and civil speed enforcement system prior to its installation on the entire NEC, Amtrak has developed a strategy to phase-in installation. The initial installations would protect entry to and operations along the high speed territory. During the initial phase, the transponders would not be installed on non-high speed tracks where flanking protection protects against possible encroachment into the adjacent high speed tracks. After all installations are in place on high speed tracks and on adjacent tracks where flanking protection does not exist, the transponder system would be extended to the balance of the NEC. This phased-in installation would also allow users of the NEC to defer installation of the ACSES system on some of their rolling stock while they obtain the necessary internal or external financing.

A specific application of this interim installation staging strategy being considered between New York and Washington, D.C. is to operate the new HST's up to 135 mph in specific areas where Metroliners currently operate at 125 mph and where signal spacing, catenary and track structure are adequate for 135 mph operation of HST's. For example, 135 mph operation is possible on Tracks 2 and 3 between ''County'' Interlocking (MP 32.8, west of New Brunswick, New Jersey) and MP 54.0 east of ''Ham'' Interlocking east of Trenton, New Jersey. Consideration is being given to initially installing the ''ACSES'' transponder based civil speed and positive stop enforcement system only on Tracks 2 and 3 between ''County'' (MP 32.8) and ''Ham'' (MP 55.7), depending on flanking protection at ''Midway'' (MP 41.3) to divert any possible stop signal ''overruns'' away from the path of an HST operating over 125 mph on Track 2 or 3.

In addition to the use of flanking and phased installation, freight trains that are not equipped with ACSES will be allowed to operate on the NEC at off-peak times when no high speed passenger trains are operating in the area. These operations would be within windows that have been verified and strictly adhered to. This exception would be created to allow the smaller entities to continue to operate prior to the equipping of all their equipment.

This strategy would allow Amtrak to take advantage of some of the new HST's capability before the ACSES system is fully installed and before all other vehicles can be equipped. These initial installations would also give

operating personnel some solid experience with the new system before it is extended throughout the entire NEC.

Other areas being considered for 135 mph operation with initial ACSES installation in this same manner are ''Morris'' (MP 58.4) to MP 74.0 east of ''Holmes'' (MP 77.2), ''Ragan'' (MP 29.9) to ''Bacon'' (MP 51.0) with No. 3 track only extended on through ''Bacon'' to MP 56.7 north of ''Prince'' (MP 57.3), and ''Grove'' (MP 112.6) to ''Landover'' (MP 128.8). Taken together as an initial installation in the New York to Washington portion of the NEC, 171 track miles of ACSES could provide up to 80 route miles of 135 mph operation on the 225 mile run. This strategy would provide initial valuable operating benefits and experience without sacrificing any of the higher level of safety required for trains operating over 125 mph, and without (initially) equipping any vehicles other than those trains operating over 125 mph.

Between New York City and Washington, D.C., Amtrak proposes for the present to install the ACSES system only in territory where train speeds will exceed 125 mph. Since freight trains do not operate on the NEC at speeds over 50 mph, and none of the existing commuter equipment operating on the NEC can operate at speeds exceeding 125 mph, Amtrak does not view installation of ACSES on freight and commuter equipment operating between New York City and Washington, D.C. to be necessary during the initial phase. The installation of ACSES between New York and Washington, D.C. would provide transponder-based positive stop enforcement on all main tracks where speeds exceed 125 mph, and on all tracks leading to high-speed tracks where flanking protection is not provided.

Between New Haven and Boston, the ACSES would be installed on all main tracks where speeds exceed 110 mph. Ultimately, plans call for installation of this system on all main tracks along the NEC where speeds currently exceed the 60–80 mph range except for New Rochelle to New Haven, a segment controlled by the MTA Metro-North Railroad where speeds will not exceed 110 mph.

Another interim installation concerns the use of #26.5 straight-frog turnouts. These turnouts are only good for diverging moves at 60 mph. Amtrak intends to install these turnouts at limited locations where there is insufficient space to install the #32.7 turnouts needed for diverging moves at 80 mph. Using the 60 mph aspect in the 9-aspect cab signal/ATC system requires all equipment to be able to receive and decode 270 code.

To allow for the installation of these 60 mph turnouts in territory where all users have not yet upgraded to the full 9-aspect system, Amtrak proposes an interim procedure. Until all users have been equipped, Amtrak proposes that the cab signal/ATC system will display an 80 mph aspect for diverging moves over these turnouts. The ACSES passive transponder sets approaching this location and at this location would enforce a 60 mph civil speed restriction for all routes through the interlocking where the #26.5 turnout is located. An active transponder would be located at the distant signal prior to the locations where trains must begin to reduce to 60 mph. This active transponder would override the 60 mph civil speed command when the signal system logic determines that the interlocking is cleared for a non-diverging move at a higher speed than 60 mph.

This scheme requires that all vehicles equipped with the 9-aspect cab signal/ ATC system also be equipped with ACSES. Existing 4-aspect cab signal/ ATC systems would enforce 45 mph for passenger trains and 30 mph for freight trains. This interim arrangement would also be backed up by a site specific instruction and an appropriate reflectorized sign on the distant signal requiring 60 mph with the display of the ''Cab Speed'' aspect. When all vehicles operating in the area are equipped, the active transponder can be removed and the 270 code for 60 mph installed.

Under Amtrak's design, the ACSES system would be required to have a minimal database for the entire NEC which would enable a train to always know where it is within the NEC, which track it is on, what permanent speed restrictions apply, and where the next temporary speed order would need to be executed. With this capability, the ACSES system would be able to perform certain auxiliary functions required by HST's.

Regulatory Approvals Required

In general, new signal and train control systems must comply with FRA's Rules, Standards and Instructions Governing the Installation, Inspection, Maintenance, and Repair of Signal and Train Control Systems, Devices, and Appliances (49 CFR Part 236). FRA will implement any exceptions on a case-by-case basis through the waiver process as provided by 49 CFR Part 235. Train operations in excess of 110 miles per hour must be authorized by FRA after examination of pertinent safety considerations in accordance with 49 CFR 213.9(c). Metroliner service on the NEC is conducted in accordance with such an authorization.

In addition, NEC operations are subject to special requirements of the Rail Safety Improvement Act of 1988, which mandated that all NEC trains be equipped with ''automatic train control systems designed to slow or stop a train in response to external signals.'' Sec. 9, Public Law 100–342, implemented at 52 FR 44510 (Nov. 19, 1987), 53 FR 1433 (Jan. 19, 1988), and 53 FR 39834 (Oct. 12, 1988).

Safety Performance Standards

On May 29, 1992, Amtrak informed FRA of its intention to implement a proposed 9-aspect cab signal/speed control system supplemented with an intermittent transponder civil speed enforcement system on the NEC. On June 23, 1992, FRA notified Amtrak that the proposed system would have to comply with Part 236. FRA also suggested the following specific performance standards for the ACSES components:

1. The system must enforce permanent and temporary civil speed restrictions (e.g., track curvature, bridges, and slow orders).

2. All trains operating over the trackage of the proposed system must be equipped to respond to the continuous cab signal/speed control system and intermittent transponder civil speed enforcement system.

3. Conflicting aspects or indications may not be displayed in the locomotive cab.

4. The system must enforce the most restrictive speed at any location associated with either the civil restriction or cab signal aspect.

5. The system shall include a restricted speed command or code rate to permit the train to continue at restricted speed only if this command is received. The system shall be arranged so that if the speed command is not received the train will be brought to a stop and cannot be moved again until some type of apparatus interconnected with the train control system and controlled by the dispatcher is used. The train may then only travel at restricted speed until a valid speed command is received by the on-board train equipment.

In a September 17, 1992 letter, Amtrak responded to technical issues raised at an earlier meeting between Amtrak and FRA. Amtrak agreed with performance standards 1, 3, and 4, but had reservations concerning performance standard 2 because of the funding needed to upgrade commuter and freight corridor users' train control systems. Amtrak also questioned the

need to equip certain user vehicles with a full microprocessor scanning system if the user trains did not operate at speeds in excess of 100 mph, civil speed reductions in the territory operated were relatively few, and civil speeds could be controlled by the continuous cab signal enforcement system without adversely impacting train schedules or on-time performance.

Amtrak also requested relief from performance standard 5, which requires an enforced stop at interlocking signals with an advance track configuration that would not establish high speed track fouling, where the maximum authorized speed does not exceed 45 mph through an interlocking arrangement or terminal. The system would still contain a recurring 15 second audible warning and a 20 second acknowledge requirement while operating at restricted speed.

At a meeting on September 20, 1994, the Northeast Corridor Safety Committee, a federal advisory committee chartered pursuant to the Rail Safety Enforcement and Review Act of 1992, considered the issue of an enhanced NEC train control system and agreed with draft performance specifications similar to those set forth above. The draft performance standards placed before the Committee included equipping of all movements in high-speed territory. However, the issue of increased speeds south of New York City was not discussed, since Amtrak had not proposed to increase speeds on the South End at that time. The Committee was in general agreement that the current cab signal/ATC system should be supplemented, as proposed by Amtrak, in connection with NEC improvements.

Discussion

Safety Need

Increases in train speed, in the traffic density planned for both intercity and commuter service, and in the potential for increased freight operations over a portion of the NEC territory would increase the risk of a severe accident on the NEC unless compensating measures are taken. These risks fall into four general categories requiring separate analysis, three of which are pertinent here.

The first risk is of a train-to-train collision. Although the existing cab signal/ATC system on the NEC provides a very high level of safety, some risks remain. The cab signal/ATC system currently in use on the NEC does not enforce a positive stop at signals displaying a stop aspect, nor does it require acknowledgment of the restricting aspect every 20 seconds. Instead, the engineer receives one warning that must be acknowledged when a ''zero'' code rate is experienced. Thus, the principal hazard is not that a train operating under a restricted speed code could strike another train. Rather, it is that a slower train could move through the control point into the path of a high-speed train. This could happen if the engineer of the train subject to the stop signal experienced an incident of micro sleep, accompanied by a conditioned response of acknowledging the warning, was distracted, or was impaired. Less likely to occur, but still possible, is a scenario where an engineer or a third party acts recklessly. This scenario must be taken seriously in light of recent acts of domestic terrorism.

Clearly, equipping only high-speed trains with on-board equipment responsive to the ACSES system is insufficient by itself to prevent collisions at key control points. Only by equipping all trains can the safe movement of high-speed trains be reasonably ensured. Amtrak's observation that positive stop capability need only be provided at locations providing access to high-speed track appears to have merit, however.

The second risk is of an overspeed derailment which may result in direct harm or harm flowing from a resulting impact with other trains or fixed objects. Currently, locations on the NEC where signal speed restrictions are higher than the overturning speed of the curve are protected by special speed control features specific to those locations. As speeds rise for both intercity and commuter trains, the number of track segments requiring special control will increase. Allowances for higher levels of unbalance (implicit in the flexibilities proposed in the July 3 Track Safety Standards Notice of Proposed Rulemaking (NPRM)) would also create potential exposure that does not currently exist. The speed control features of the ACSES will deal effectively and economically with this potential safety exposure, while providing all passenger operators on the corridor with the potential for reduced trip times.

The third risk is of an impact with track forces or their equipment. This risk is endemic to all rail operations, but increased speed drives up potential severity and reduces the warning time of a train's approach. Unlike revenue rolling stock, many pieces of maintenance-of-way equipment will not reliably shunt or activate a signal system. Further, although great care is taken to ensure that workers and their equipment are protected from train movements, human error in issuing or executing such authorities can occur.

Although the recently published final rule for Roadway Worker Safety will help to control this risk (61 FR 65959; December 16, 1996), a train control system with the capability to provide automatic warning to the train of the presence of workers or equipment prior to visual sighting could significantly drive down the risk of harm to both roadway workers and train occupants. This is of particular concern on a high-speed railroad with very dense operations and close track centers, conditions that prevail on much of the NEC.

The ACSES system incorporates portable transponder technology that can provide a second layer of safety for roadway workers and their equipment. Further, temporary speed restrictions would be entered into the on-board ACSES computer, providing for automatic enforcement even if temporary transponders are misplaced or vandalized. These features should increase the safety of those conventional and high-speed trains that are equipped with on-board computers.

A fourth risk accentuated by higher speeds is increased severity of an accident resulting from an undetected incursion into the right of way or clearance envelope, including possible displacement or undermining of track structure. This fourth risk is not addressed in this proceeding since the Northeast Corridor Safety Committee will evaluate this issue in a separate ''system safety'' proceeding to be held at a later date. However, the data radio element of the ACSES system provides a possible communication path for hazard detection information (in addition to the cab signal system).

Technical Issues

In Amtrak's proposed system, the brake and propulsion interface between the ACSES and the locomotive would be similar to that utilized in conventional cab signal/ATC systems. The interface would be separate and distinct from the interface used by the cab signal/ATC system. The failure of either the cab signal/ATC system or the ACSES would not prevent the remaining functioning system from performing its intended operation and displaying the proper on-board aspect. Both the signal speed and the civil speed would be displayed with the lower of the two speeds to be enforced.

FRA questions the need or prudence of displaying both speeds and continues to gather information on this design. Comment is requested regarding the

appropriate means of displaying system information to the locomotive engineer.

The new transponder-based system would provide for enforcement of permanent civil speed restrictions (curves, bridges, etc.) and temporary speed restrictions (slow orders) in five MPH increments, as well as enforcement of stop aspects at interlocking home signals. Once the train is stopped, current plans call for the system to require the train to remain stopped for 30 seconds at which time the engineer will operate a stop override button and allow movement of the train, with the audible alarm requiring acknowledgment every 20 seconds. FRA is aware that some locomotive engineers may find repetitive acknowledgment of this feature distracting during low-speed movements through terminal areas and requests comments regarding possible alternative arrangements.

FRA discussed with Amtrak a feature under which a controlled release would be encrypted into the on-board computer at the time of departure to ensure that movement could not be made past stop aspects at home signals without a secure means of authorization. Amtrak opposed this approach, arguing that the train should remain under the control of the engineer, who may have a more complete and current understanding of considerations pertinent to the safety of the train movement. For instance, if a structure or vehicle adjacent to the wayside was on fire, it would be necessary to move the train to avoid a hazard to the passengers and crew. Nevertheless, FRA believes operation of a train where a positive stop is required should occur only after the engineer cuts out or overrides the ACSES through a mechanism located away from the engineer's console, the location and/or operation of which would require special knowledge available only to a person authorized to operate the override. Amtrak has endeavored to respond to this concern in designing the ACSES.

Text and Analysis of Proposed Orders

For purposes of clarity and convenience, the text of the proposed order is interspersed with explanations and analysis. The text of the proposed order is printed in italics. FRA reserves the right to revise and augment the proposed order upon final issuance and invites comments on all issues relevant to the subject matter of the order.

Proposed Effective Date

As discussed above, Amtrak anticipates beginning receipt of the new HST's in 1999. FRA proposes to make this Order effective on October 1, 1999, to enable Amtrak to rapidly utilize the new system's improvements while allowing other users of the NEC to phase-in installation.

Scope and Applicability

This order supplements existing regulations at 49 CFR Part 236 and existing orders for automatic train control on the Northeast Corridor (NEC). This order applies in territory where Amtrak has installed wayside elements of the Advanced Civil Speed Enforcement System (ACSES), permitting high-speed operations under the conditions set forth below. All railroads operating on high-speed tracks in such equipped territory, or on tracks providing access to such high-speed tracks, shall be subject to this order, including the following entities operating or contracting for the operation of rail service—

Connecticut Department of Transportation;
Consolidated Rail Corporation;
Massachusetts Bay Transportation Authority;
National Railroad Passenger Corporation (Amtrak); and
Providence and Worcester Railroad Co.

Explanation and Analysis. Amtrak has undertaken the planning and installation of the ACSES as part of its capital program for intercity service on the NEC, consistent with legislation providing for improved rail service in the region. The proposed order would require all carriers operating in ACSES territory to equip their controlling locomotives with operative on-board equipment. This equipment would consist of a transponder scanner, an on-board computer, a display unit for the locomotive engineer, and appropriate interface with the cab signal/train control apparatus.

The exception would be trackage on the South End where access is barred to non-ACSES-equipped trainsets and where increases in the maximum speed will be from 125 mph to 135 mph. In this instance, only Amtrak trains would be required to be equipped.

FRA views the distinctions between required signal and train control features on the north and south portions of the NEC to be temporary. The proposed order would allow increases in train speeds without any reduction in safety. Over time, the ACSES system should be completed and used by all operators throughout the NEC for routes where speeds exceed 110 mph on any segment, enhancing safety throughout the NEC. In fact, New Jersey Transit Rail Operations (NJT) has indicated its intention to equip its controlling locomotives with an Advanced Speed Enforcement System (ASES), deriving safety advantages both on the NEC and on certain of its lines where the ASES system can be used as an intermittent train stop system. As Amtrak, North End operators and NJT demonstrate the benefits and reliability of the system, progress toward universal upgrading of the NEC signal and train control system will be fostered. At a later date, FRA may amend this order to require more extensive use of this new safety technology. This will be determined by increases in traffic and types of equipment used on the NEC.

Definitions. For Purposes of This Order—

''High-speed track'' means (1) a track on the main line of the Northeast Corridor (NEC) between New Haven, Connecticut, and Boston, Massachusetts (''North End'') where the maximum authorized train speed for any class of train is in excess of 110 miles per hour or (2) a track on the main line of NEC between Washington, D.C., and New York City, New York (''South End''), where the authorized train speed for any class of train exceeds 125 mph.

Explanation and Analysis. Operations on the North End are conducted on two main tracks, while additional main tracks are available on portions of the South End. Operations are already highly dense on the North End, and projections for the future indicate significant increases in traffic, both freight and passenger. Track curvature on the North End exceeds the average curvature on the South End, resulting in greater potential concern for compliance with civil speed restrictions. Accordingly, FRA proposes to distinguish between the two operations for purposes of determining applicability of new performance requirements.

''Signal and train control system'' refers to the automatic cab signal/automatic train control system (cab signal/ATC) in effect on the NEC at the date of issuance of this order, as supplemented by ''ACSES,'' together with such modifications as Amtrak shall make consistent with this order.

Performance Standards

The following performance standards and special requirements apply:

1. Except as provided in paragraph 10(b), the signal and train control system shall enforce both permanent and temporary civil speed restrictions (e.g., track curvature, bridges, and slow orders) on all high-speed tracks and immediately adjacent tracks.

Explanation and analysis. The ACSES system can prevent derailments and collisions with fixed structures or on-track personnel or equipment that might result from overspeed operation. Accordingly, permanent civil speed enforcement and temporary speed enforcement are proposed.

Existing features of the cab signal/ATC system on the NEC provide intermittent civil speed enforcement at key locations where signal speeds exceed overturning speeds or where station operations require special protection. However, as speeds are increased, civil speed enforcement will become an issue at additional locations. The ACSES would permit higher operating speeds while maintaining a high level of safety.

The existing signal system would not enforce temporary speed restrictions, such as slow orders over defective track or protections for roadway workers. By using temporarily placed transponders, and by entering restrictions into the on-board computer by milepost, the ACSES could provide excellent protection for train movements and workers and equipment on or adjacent to live tracks. All trains equipped with on-board ACSES units would benefit from this feature.

The proposed order suggests that this requirement should be extended to tracks adjacent to high-speed tracks. The effective operating envelope for high-speed tracks includes immediately adjacent tracks. Derailments on those tracks could endanger high-speed operations.

2. Except as provided in paragraph 10(b), all trains operating on high-speed track, immediately adjacent track, or track providing access to high-speed track shall be equipped to respond to the continuous cab signal/speed control system and intermittent transponder civil speed enforcement/positive stop system. Freight trains that are not equipped with ACSES will be allowed to operate on the NEC at off-peak times when no high-speed passenger trains are operating in the area.

Explanation and analysis. As noted above, the ACSES system could provide potential benefits for all users of the NEC. However, this proposed order would only require equipping trains on the North End, where trains are operated on high-speed tracks, or on immediately adjacent tracks providing access to high-speed tracks.

The benefits of equipping high-speed trains are obvious. The benefits of equipping conventional speed trains that operate on high-speed tracks include enforcement of civil speed restrictions, temporary speed restrictions, and positive stop features. The benefits of equipping conventional speed trains that operate on immediately adjacent tracks providing access to high-speed tracks may derive primarily from enforcement of positive stop features. If a train is prevented from inappropriately proceeding through a junction and onto a high-speed track, the safety of the subject train and the safety of the oncoming high-speed train are equally assured. As a practical matter, FRA believes that few trains required to be equipped under this proposal would not make use of high-speed tracks. Again, comment is specifically requested regarding whether any circumstances exist under which trains would be required to be equipped exclusively because they operate on adjacent tracks or on tracks providing access to high-speed tracks. (See, also, paragraph 10(b), below.)

3. No conflicting aspects or indications shall be displayed in the locomotive cab.

Explanation and analysis. The proposed order would require that consistent information be displayed to the locomotive engineer. Amtrak plans to implement this principle, while providing information from both the cab signal/ATC system and the ACSES, by displaying both of the resulting maximum speeds. The controlling (most restrictive) limit would be displayed at twice the brightness of the other speed. The cab signal aspect would also be displayed.

FRA believes that Amtrak's proposed display (details of which are contained in the program description placed in the docket of this proposed order) is appropriate for a hybrid system such as this. However, it should be noted that the amount of apparently conflicting information provided to the locomotive engineer may be substantial. In particular, the engineer (who may operate non-equipped trains on certain days and equipped trains on other days) will have to contend with 9-aspect cab signal information that differs from the wayside signal and potentially the wayside or overhead speed boards, ACSES information, and at least two systems requiring acknowledgment of audible warnings (the alerting device and the combined cab signal/ATC/ACSES unit). Is this information excessive? Should a simpler display of the most safety critical information be provided as the default condition?

4. The system must enforce the most restrictive speed at any location associated with either the civil/temporary restriction or cab signal aspect.

Explanation and analysis. This requirement states the obvious requirement that the most restrictive of the limitations indicated by the cab signal/ATC or ACSES system must be enforced.

5. At interlocking home signals and control points on high-speed tracks or protecting switches providing access to high-speed tracks, the signal and train control system shall enforce a positive stop short of the signal or fouling point when the signal displays an absolute stop. The system shall function such that the train will be brought to a complete stop and cannot be moved again until the first of the following events shall occur: (1) The signal displays a more permissive aspect; or (2) in the event of a system malfunction, or system penalty, at least 30 seconds shall have elapsed since the train came to a complete stop, the engineer has received verbal authority to proceed from the dispatcher, and the engineer has activated an override or reset device that is located where it cannot be activated from the engineer's accustomed position in the cab. The train may then only travel at restricted speed until a valid speed command is received by the on-board train equipment.

Explanation and analysis. Providing for normal and extraordinary movements past a signal that previously required an absolute stop using a hybrid cab signal/ATC/ACSES arrangement has proven to be one of the most challenging issues in the design of the new system. As originally conceived by Amtrak, in the normal case ACSES would enforce a positive stop by use of an active transponder near the distant signal that would read the cab signal code (''0''), recognize that the home signal is capable of displaying an absolute stop, and enforce a positive stop even if the home signal actually displayed a restricting indication (permitting movement through the location at up to 15 mph), unless a greater than zero code rate was detected upon reaching the ''cut section'' in which the home signal was located. This arrangement appeared to have several disadvantages. First, stops would be required where presently none are required. This could be a significant issue in freight

operations, since enforcement of unnecessary stop commands could in some cases result in unacceptable in-train forces. Second, movements past a stop signal that became restricting after the stop would have to be made by overriding the positive stop. Third, these arrangements would inevitably lead to demands for release of the positive stop from the engineer's position in the cab, potentially defeating the concept intended to be implemented by FRA when conversations with Amtrak were initiated on this subject in 1992.

To avoid distracting or fatiguing the engineer, and to ensure that the override function is not regarded as a feature to be casually employed, it appears to be more appropriate to restrict the use of the reset or override button to that of instances of system failures, on-board or wayside. Efficiency also suggests permitting the train to proceed when a train receives an indication more favorable than absolute stop (a consideration of interest particularly to those commuter authorities that would be subject to the proposed order). Accordingly, FRA proposed that the train control system function in greater harmony with the wayside signals. This could be accomplished in a number of ways.

First, it should be possible to place one or more additional transponders that derive information directly from the circuits controlling the home signal. Amtrak indicates that this approach could be complicated by the varying stopping distances of trains using the NEC, but in principle the approach seems feasible. If this approach were to be employed, these transponders should be placed to control speed approaching the signal while providing information concerning more favorable aspects as a means of releasing the absolute stop automatically. Second, it should be possible to use a steady 250 Hz to release the stop when the signal upgrades to restricting. This would require modifications to the signal system at each home signal and control point. Third, data radio could be used on the wayside to provide precise signal status (notwithstanding the zero code read by the cab signal system) when the signal is at ''Stop and Proceed,'' or ''Restricting.'' Any of these options would allow the movement past a restricting signal without the use of a reset or override button by the engineer.

Amtrak agreed, at a June 4, 1997 meeting, to accelerate the development of the ACSES data radio feature to reduce the need to operate the ''Stop Override'' button to only those instances in which some sort of system failure has occurred and the train must be moved. The data radio feature located at the interlocking and known as a Mobile Communication Package (MCP) would broadcast a message to the approaching train that is track specific, direction specific, and location specific that would automatically release the stop-override feature without the engineer having to operate the ''Stop Override'' button when the home signal displays ''Stop and Proceed.'' The message would only be transmitted and only be effective when the train is between the distant signal and the home signal of the interlocking. If the signal displays ''Restricting,'' the MCP data radio would broadcast a similar message to the approaching train that would relieve the train from actually having to stop. While the additional time frame and cost to develop the data radio encoder and to install these encoders along with the MCP radios at all interlockings in ACSES territory is not yet known, it is clear that this is the only method, among those that have been proposed, with long-range potential to truly enhance the future operation of ACSES on the Northeast Corridor. As the additional time frame to develop the data radio/encoder override release feature is not yet known, and as the schedule to begin high speed rail operations in 1999 is very tight, FRA recognizes that some relief concerning operation of the ''Stop Override'' button may be required, particularly should Amtrak seek approval for limited operations to 135 mph on the south end during 1998. FRA feels that a clear plan for migration with timetables should be submitted prior to the granting of increased speeds.

6. Failure modes of the system will allow for train movements at reduced speeds, as follows:

a. Failure of Cab Signal/ATC System: In the event of failure of the cab signal/ATC system on board a train, the cab signal/ATC system will be cut out; however, the ACSES system shall remain operative and enforce the 79 mph speed limit. If intermediate wayside signals are provided, the train will continue to operate at speeds not exceeding 79 mph subject to indications of the wayside signal system. In territory without fixed automatic block signals, trains will run on special ''Clear to Next Interlocking'' signals. When failure occurs after a train has entered such a block, it will proceed at restricted speed to the next interlocking and may not pass the home signal, regardless of the aspect displayed, until the flashing lunar ''Clear to Next Interlocking'' signal is displayed. The train may then pass the signal and proceed at 79 mph. The speed limit shall be enforced by the Advanced Civil Speed Enforcement System (ACSES). At the next distant signal the train must begin braking, preparing to stop at the next home signal unless a flashing lunar signal with the letter ''N'' is displayed indicating that the ''Clear to Next Interlocking'' signal is already displayed ahead.

Explanation and analysis. The cab signal/ATC portion of the system would be cut out under operating rules which meet § 236.567 requirements. The operation of trains when the cab signal/ATC portion of the system was failed and/or cut out would be enhanced by the ACSES still being in operation. The ACSES central processing unit (CPU) would receive a message from the cab signal/ATC CPU through a vital link that the cab signal/ATC is cut in and not failed. If the ACSES does not receive this message, a speed of 79 mph is locked in and the display is dark, other than the 79 mph displayed in the civil speed portion, which is enforced. Temporary and permanent speed restrictions and positive stop at home signal locations would continue to be enforced by the ACSES system.

b. ACSES failure. If the on-board ACSES fails en route, it must be cut out in a similar manner to the cab signal/ATC system. The engineer will be required to notify the dispatcher that the civil speed/positive stop enforcement system has been cut out. When given permission to proceed, the train must not exceed 125 mph (South End) or 110 mph (North End). All trains with a cut out ACSES system will operate at conventional train speeds.

Explanation and analysis. After considering how to proceed when the ACSES must be cut out on a train, the proposed order specifies minimal requirements, which would require that trains fall back to existing maximum speeds in the territories. However, this approach cannot provide positive stop capability or compensate for higher curving speeds that may be allowed using tilt HST's. All trains with a cut out ACSES would operate at conventional train speeds whether they are tilt train equipment or conventional equipment. The vital link between CPUs mentioned in 6.(a) above would inform the signal CPU that the civil speed CPU was cut out or failed. FRA has inquired whether a default speed limit could be ''enforced'' through the signal speed enforcement system when the ACSES is failed and/or cut out, and Amtrak responded that this could be accomplished. The maximum speed to

be enforced by the cab signal system if ACSES is cut out is 125 mph. This places a premium on compliance with operating rules developed specifically for this purpose (copies of which are available in the public docket). Comment is requested regarding appropriate measures, recognizing that electronic failures and damage to scanners from refuse on the track structure will result in ACSES failures.

c. Cab signals/ATC & ACSES failure. If the cab signal/ATC system and the ACSES both fail en route, the systems shall be cut out and the train shall proceed as provided in 49 CFR § 236.567.

Explanation and analysis. When the signal and train control system fails and/or is cut out en route, § 236.567 sets forth the procedures and restrictions that shall be followed.

Where an automatic train stop, train control, or cab signal device fails and/or is cut out enroute, train may proceed at restricted speed or if an automatic block signal system is in operation according to signal indication but not to exceed medium speed, to the next available point of communication where report must be made to a designated officer. Where no automatic block signal system is in use train shall be permitted to proceed at restricted speed or where automatic block signal system is in operation according to signal indication but not to exceed medium speed to a point where absolute block can be established. Where an absolute block is established in advance of the train on which the device is inoperative train may proceed at not to exceed 79 miles per hour.

These procedures are used with present train control systems, both on the NEC and throughout the Nation and have proven to be a reliable and safe method when the signal and train control system fails and/or is cut out.

d. Wayside signal system failure. If the wayside signal system fails, train operation will be at restricted speed to a point where absolute block can be established in advance of the train. Where absolute block is established in advance of the train, the train may proceed at speeds not to exceed 79 mph.

Explanation and analysis. The carrier's operating rules shall effect these requirements. In the case of a wayside signal system failure the ACSES would still be functioning, giving trains an added portion of safety, but it would still be necessary to establish an absolute block and proceed not to exceed 79 mph. The ACSES would enforce the 79 mph speed, as well as civil and temporary speed restrictions and positive stops.

e. Missing transponder. If a transponder is not detected where the equipment expected to find the next transponder, the train must not exceed 125 mph (North End) or 110 mph (South End) until the next valid transponder is encountered. The 125/110 mph speed restriction will be enforced by the system and ''—'' will be displayed to indicate that the civil speed is unknown. The audible alarm for civil speeds will sound and must be acknowledged. Speed restrictions previously entered into the system, whether temporary or permanent, will be displayed at the proper time and continue to be enforced. If the missing transponder is a positive stop enforcement transponder at the distant signal to an interlocking, then the system will treat the missing transponder as if it were present and a stop will be required. Since the previous transponder will have transmitted the distance to the stop location, the stop shall be enforced unless a cab signal is received that indicates the interlocking signal is displaying an aspect more favorable than ''Stop,'' ''Stop & Proceed,'' and ''Restricting.'' The 125/110 mph speed restriction will also be enforced regardless of whether the cab signal aspect is being received.

Explanation and analysis. Permanent transponders would be programmed with information that includes distance to the next transponder. Wheel rotations would be logged to determine train position between transponders. If a transponder is missing (or is not successfully read), speeds would be slowed to 125 or 110 mph, depending upon the territory involved, until the next valid transponder is detected.

8. When it becomes necessary to cut out the cab signal/ATC system, the ACSES, or both, these systems shall be considered inoperative until the engine has been repaired, tested and found to be functioning properly. Repairs shall be made before dispatching the unit on any subsequent trip.

9. Other requirements applicable to the system are as follows:

a. Aspects in the cab shall have only one indication and one name and will be shown in such a way as to be understood by the engine crew. These aspects shall be shown by lights and/or illuminated letters or numbers.

b. Entrances to the main line can be protected by electrically locked derails if the speed limit is 15 mph or less. A transponder set shall cut in the ACSES prior to movement through the derail and onto the main line. If the speed limit is greater than 15 mph, a positive stop will be required. At entrances from a signaled track, the ACSES shall be cut in prior to the distant signal and a positive stop enforced at the home signal.

c. An on-board event recorder shall record, in addition to the required functions of § 229.5(g) [of FRA's Railroad Locomotive Safety Standards (49 CFR Part 229)], the time at which each transponder is encountered, the information associated with that transponder, and each use of the positive stop override. These functions may be incorporated within the on-board computer, or as a stand alone device, but shall continue to record speeds and related cab signal/ATC data, even if ACSES has failed and/or is cut out. The event recorder shall meet all requirements of § 229.135.

Explanation and analysis. FRA has determined that event recorders enhance railroad safety. Whether they are used to aid accident analysis, to monitor locomotive engineers' performance, or to monitor equipment performance, event recorders provide data that are free from bias, free from the inconsistent powers of human observation, and free from the possible taint of self-interest. There has been no question of the cab signal/ATC events being recorded; what FRA is ensuring is that the ACSES portion of the system is recorded and made available as well.

10. The following maximum speeds apply on the NEC in territory subject to this order:

a. In ACSES territory where all trains operating on high-speed tracks, adjacent tracks, and tracks providing access to high-speed tracks are equipped with cab signal/ATC and ACSES, qualified and ACSES-equipped trainsets otherwise so authorized may operate at maximum speeds not exceeding 150 mph. The maximum speed over any highway-rail crossing shall not exceed 80 mph.

b. In ACSES territory between Washington, D.C., and New York City, New York, where access to any high-speed track is barred by switches locked in the normal position and a parallel route to the high-speed track is provided, at crossovers from adjacent tracks, and where no junctions providing direct access exist, qualified and ACSES-equipped trainsets otherwise so authorized may operate to a maximum speed not exceeding 135 mph on such track; and provisions of this order requiring other tracks and trains to be equipped with the ACSES do not apply.

Explanation and analysis. Currently maximum speeds for trains on the general rail system are limited to 110 miles per hour. Under a waiver, Amtrak operates Metroliner service between New York and Washington at speeds up to 125 miles per hour. This proposed order would allow Amtrak to increase its speeds on the South End of the NEC to 135 miles per hour by installing the ACSES transponders on the wayside and equipping new high-speed trainsets with on-board scanners and computers. Other users of Amtrak's South End high-speed tracks would not be required to be equipped for the present, but would benefit from the higher level of safety associated with Amtrak operations. As noted above, other users have already begun to recognize the value of the ACSES technology, and eventual equipping of all NEC users is expected (but would not be required under this order).

On the North End, maximum speeds top out at 110 mph. No waiver exists for high-speed service. This order would authorize operation of qualified trainsets at up to 150 miles per hour in territory where Amtrak has installed ACSES on the wayside, provided Amtrak and other users are equipped. This authority would apply equally to the North and South Ends provided the specified conditions are met.

Speeds over highway-rail crossings would be limited to 80 mph, the maximum speed planned under the NEC program until very recently. This limit is lower than the 110 mph cap included in current guidelines for high-speed corridors (absent barrier and presence detection systems tied into the signal system). Density of NEC operations and the increased possibility that a collision with a motor vehicle might cause a secondary collision between trains operating at combined very high closing speeds suggests the need for appropriate caution. FRA reserves the right to allow higher speeds over individual highway-rail crossings after demonstration by Amtrak that appropriate safety measures have been implemented.

The phrase ''otherwise authorized,'' as applied to trains, refers to equipment qualified for higher speeds in track/vehicle interaction limits proposed in FRA's Track Safety Standards NPRM. Metroliner equipment is currently authorized to operate up to 125 miles per hour. FRA anticipates that the new American Flyer trainsets will be qualified to operate up to 150 miles per hour. It is possible that other equipment presently operating on the NEC might be qualified to operate at higher than conventional speeds under the procedures of the proposed Track Safety Standards revisions.

At present, specific regulatory action applicable only to the NEC includes conditional waiver authority for operation of Metroliner equipment to 125 miles per hour and requirements for use of the cab signal/ATC system by all operators. FRA reserves the right to merge some or all of these provisions in the final order. Comment is requested regarding the appropriateness of doing so.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by Government regulations. FRA certifies that this proposed order would not have a significant economic impact on a substantial number of small entities. As explained below in the Regulatory Impact Analysis, the proposed order would limit its hours of application to minimize impact on the only small entity affected, the Providence and Worcester Railroad.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA), Public Law No. 104–13, section 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR Part 1320, the Office of Management and Budget (OMB) does not need to approve information collection requirements that affect nine or fewer respondents. FRA has determined that information collection requirements in this proposed order would affect only five railroads, and that therefore OMB approval is not required.

Regulatory Impact

Executive Order 12866 and DOT Regulatory Policies and Procedures

This rule has been evaluated in accordance with existing policies and procedures. It is believed that the rule will be determined to be non-significant under both Executive Order 12866 and DOT policies and procedures (44 FR 11034; February 26, 1979). FRA has prepared and placed in the docket a regulatory analysis addressing the economic impact of the proposed rule. Document inspection and copying facilities are available at 1120 Vermont Avenue, 7th Floor, Washington, D.C. Photocopies may also be obtained by submitting a written request to the FRA Docket Clerk at Office of Chief Counsel, Federal Railroad Administration, 400 Seventh Street, S.W., Washington, D.C. 20590.

FRA has analyzed the benefits and costs of upgrading the signal systems in the NEC to the ACSES system. The NEC has many unique aspects, and many of the economic issues arising in analysis of this proposal are extremely complicated. It appears that there would be significant safety costs were FRA not to order significant upgrades to the signal systems in the NEC.

Amtrak and NJT have sound business reasons for adopting the proposed transponder-based system, but safety benefits will also accrue in large measure to society. FRA estimates that societal direct safety benefits will be more than $200,000,000. The system will cost approximately $95,000,000 (an amount which will accrue over several years, approximately $36,000,000 of which will be imposed directly by this order, implementing the first phase) so the net benefit will be approximately $105,000,000. There will also be benefits beyond the direct safety benefits, such as the ability to improve traffic flow and to divert traffic from modes with greater societal costs. There will also be benefits from the improvement and demonstration of advanced signal technology.

This proposed order would facilitate the orderly introduction of enhanced passenger rail service on the NEC, consistent with Congress' statutory direction. The order would recognize Amtrak's investment in development and deployment of advanced technology that will enforce civil speed restrictions and positive stops at key locations along the railroad. Amtrak is also making significant investments in a new 9-

aspect signal system and improvements in track and structures that will benefit all NEC users through more efficient operations and improved safety.

The proposed order would require that controlling locomotives (including electrical multiple-unit vehicles and cab cars) on the NEC be equipped with on-board ACSES equipment. This burden would fall on commuter railroads, freight railroads, and Amtrak, in proportion to the number of trains those entities operate on the NEC. A risk assessment study conducted for Amtrak and discussed with other NEC interests in the Northeast Corridor Safety Committee illustrated the importance of a more secure train control system in avoiding any increase in system risk as train movements and speeds increase on the North End over the coming decades.

One on-board ACSES unit is expected to cost approximately $40,000. North End users exclusive of Amtrak are expected to require approximately 450 units, for a total cost of about $18,000,000. Each of these users will experience direct benefits in safety and liability avoidance. Potential benefits could result from higher average train speeds if the proposed higher levels of unbalance in the Track Safety Standards NPRM are adopted.

FRA has considered the proposed system's effect on small entities. Only one small entity, the Providence and Worcester Railroad (PW), will be affected. To minimize the impact on this small freight railroad, FRA will limit the hours of application of the proposed order to allow the PW to continue operations without equipping most of its fleet with new ACSES units.

Proceedings on This Proposed Order

FRA seeks public comment on this proposed order and related matters, including any authorization that may be required for Amtrak to implement a modified cab signal system on the NEC. FRA has placed in the docket of this proceeding copies of Amtrak's program description for the ACSES system, proposed operating rules for use in conjunction with the system, and other related information, including current Amtrak projections for operating speeds over highway-rail crossings on the North End.

No public hearing is presently planned in this proceeding. However, FRA will convene such a hearing if a request is received within 45 days from publication of this notice. FRA does intend to convene the Northeast Corridor Safety Committee following the close of the comment period to consider public comments received and provide advice for resolving remaining issues. FRA will provide notice of this meeting, which will be open to the public, and will include the minutes of the meeting in the docket of this proceeding.

Authority: 49 U.S.C. 20103, 20107, 20501–20505 (1994); and 49 CFR 1.49 (f), (g), and (m).

Issued in Washington, D.C. on November 17, 1997.

Donald M. Itzkoff,

Deputy Administrator, Federal Railroad Administration.

[FR Doc. 97–30505 Filed 11–19–97; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33388 (Sub-No. 35) et al.]

CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company—Control and Operating Leases/Agreements—Conrail Inc. and Consolidated Rail Corporation; et al.

AGENCY: Surface Transportation Board.

ACTION: Decision No. 54; Notice of acceptance of responsive applications and related filing.

SUMMARY: The Board is accepting for consideration the responsive applications filed: by New York State Electric and Gas Corporation (NYSEG) in STB Finance Docket No. 33388 (Sub-No. 35); jointly by Elgin, Joliet & Eastern Railway Company, Transtar, Inc., and I & M Rail Link, LLC, in STB Finance Docket No. 33388 (Sub-No. 36);[1] by Livonia, Avon & Lakeville Railroad Corporation (LAL) in STB Finance Docket No. 33388 (Sub-No. 39); by Wisconsin Central Ltd. (WCL) in STB Finance Docket No. 33388 (Sub-No. 59); by Bessemer and Lake Erie Railroad Company (BLE) in STB Finance Docket No. 33388 (Sub-No. 61); by Illinois Central Railroad Company (IC) in STB Finance Docket No. 33388 (Sub-No. 62); by R.J. Corman Railroad Company/Western Ohio Line (RJCW) in STB Finance Docket No. 33388 (Sub-No. 63); jointly by (i) the State of New York, acting by and through its Department of Transportation (NYDOT), and (ii) the New York City Economic Development Corporation (NYCEDC) in STB Finance Docket No. 33388 (Sub-No. 69);[2] jointly by the Belvidere & Delaware River Railway (BDRV) and the Black River & Western Railroad (BRW) in STB Finance Docket No. 33388 (Sub-No. 72); by New England Central Railroad, Inc. (NECR), in STB Finance Docket No. 33388 (Sub-No. 75); by Indiana Southern Railroad, Inc. (ISRR), in STB Finance Docket No. 33388 (Sub-No. 76); by Indiana & Ohio Railway Company (IORY) in STB Finance Docket No. 33388 (Sub-No. 77); by Ann Arbor Acquisition Corporation, d/b/a Ann Arbor Railroad (AA), in STB Finance Docket No. 33388 (Sub-No. 78); by Wheeling & Lake Erie Railway Company (W&LE) in STB Finance Docket No. 33388 (Sub-No. 80); and jointly by Canadian National Railway Company (CN) and Grand Trunk Western Railroad Incorporated (GTW) in STB Finance Docket No. 33388 (Sub-No. 81). The Board is also accepting for consideration the notice of exemption filed by GTW in STB Finance Docket No. 33388 (Sub-No. 83). The responsive applications filed in STB Finance Docket No. 33388 (Sub-Nos. 35, 36, 39, 59, 61, 62, 63, 69, 72, 75, 76, 77, 78, 80, and 81) are responsive to the primary application filed June 23, 1997, in STB Finance Docket No. 33388 by CSX Corporation (CSXC), CSX Transportation, Inc. (CSXT), Norfolk Southern Corporation (NSC), Norfolk Southern Railway Company (NSR), Conrail Inc. (CRR), and Consolidated Rail Corporation (CRC).[3] The notice of exemption filed in STB Finance Docket No. 33388 (Sub-No. 83) is related to the responsive application filed in STB Finance Docket No. 33388 (Sub-No. 81).[4]

DATES: The effective date of this decision is November 20, 1997. Comments regarding the responsive filings must be filed with the Board by December 15, 1997. Rebuttal in support of these responsive filings must be filed with the Board by January 14, 1998. Briefs (not to exceed 50 pages) must be

[1] Elgin, Joliet & Eastern Railway Company and Transtar, Inc. are referred to collectively as EJE. I & M Rail Link, LLC is referred to as IMRL.

[2] The responsive application filed jointly by NYDOT and NYCEDC purports to be filed both in STB Finance Docket No. 33388 (Sub-No. 69) (this being the sub-number docket reserved by NYDOT) and in STB Finance Docket No. 33388 (Sub-No. 54) (this being the sub-number docket reserved by NYCEDC). Although there are two responsive applicants there is only one responsive application, and we will treat this single application as if it had been filed in STB Finance Docket No. 33388 (Sub-No. 69) only.

[3] CSXC and CSXT, and their wholly owned subsidiaries, are referred to collectively as CSX. NSC and NSR, and their wholly owned subsidiaries, are referred to collectively as NS. CRR and CRC, and their wholly owned subsidiaries, are referred to collectively as Conrail or CR. CSX, NS, and Conrail are referred to collectively as the primary applicants.

[4] The responsive applications filed in STB Finance Docket No. 33388 (Sub-Nos. 35, 36, 39, 59, 61, 62, 63, 69, 72, 75, 76, 77, 78, 80, and 81) and the notice of exemption filed in STB Finance Docket No. 33388 (Sub-No. 83) are hereinafter referred to collectively as the ''responsive filings.''

filed with the Board by February 23, 1998.

ADDRESSES: An original and 25 copies of all comments referring to STB Finance Docket No. 33388 (Sub-No. 35), STB Finance Docket No. 33388 (Sub-No. 36), STB Finance Docket No. 33388 (Sub-No. 39), STB Finance Docket No. 33388 (Sub-No. 59), STB Finance Docket No. 33388 (Sub-No. 61), STB Finance Docket No. 33388 (Sub-No. 62), STB Finance Docket No. 33388 (Sub-No. 63), STB Finance Docket No. 33388 (Sub-No. 69), STB Finance Docket No. 33388 (Sub-No. 72), STB Finance Docket No. 33388 (Sub-No. 75), STB Finance Docket No. 33388 (Sub-No. 76), STB Finance Docket No. 33388 (Sub-No. 77), STB Finance Docket No. 33388 (Sub-No. 78), STB Finance Docket No. 33388 (Sub-No. 80), STB Finance Docket No. 33388 (Sub-No. 81), and/or STB Finance Docket No. 33388 (Sub-No. 83) must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, ATTN.: STB Finance Docket No. 33388, 1925 K Street, N.W., Washington, DC 20423–0001.[5]

In addition to submitting an original and 25 paper copies of each document filed with the Board, parties are also requested to submit one electronic copy of each such document. Further details respecting such electronic submissions are provided below.

In addition, one copy of each document filed in these proceedings must be served on: the U.S. Secretary of Transportation; the U.S. Attorney General; Administrative Law Judge Jacob Leventhal, Federal Energy Regulatory Commission, 888 First Street, N.E., Suite 11F, Washington, D.C. 20426; Dennis G. Lyons, Esq., Arnold & Porter, 555 12th Street, N.W., Washington, D.C. 20004–1202 (representing primary applicants CSXC and CSXT); Richard A. Allen, Esq., Zuckert, Scoutt & Rasenberger, LLP, Suite 600, 888 Seventeenth Street, N.W., Washington, D.C. 20006–3939 (representing primary applicants NSC and NSR); and Paul A. Cunningham, Esq., Harkins Cunningham, Suite 600, 1300 Nineteenth Street, N.W., Washington, D.C. 20036 (representing primary applicants CRR and CRC).

In addition, one copy of all comments filed in these proceedings must be served on the appropriate responsive applicant's representative: William A. Mullins, Esq., Troutman Sanders LLP, 1300 I Street, N.W., Suite 500 East, Washington, D.C. 20005–3314 (representing NYSEG); Thomas J. Litwiler, Esq., Oppenheimer Wolff & Donnelly, Two Prudential Plaza, 45th Floor, 180 North Stetson Avenue, Chicago, IL 60601–6710 (representing EJE, IMRL, BLE, IC, and WCL); Kevin M. Sheys, Esq., Oppenheimer Wolff & Donnelly, 1020 Nineteenth Street, N.W., Suite 400, Washington, D.C. 20036–6200 (representing LAL and RJCW); William L. Slover, Esq., Slover & Loftus, 1224 Seventeenth Street, N.W., Washington, DC 20036–3003 (representing NYDOT); Charles A. Spitulnik, Esq., Hopkins & Sutter, 888 Sixteenth Street, N.W., Washington, D.C. 20006 (representing NYCEDC); Peter A. Greene, Esq., Thompson Hine & Flory LLP, 1920 N Street, N.W., Suite 800, Washington, D.C. 20036 (representing BDRV and BRW); Karl Morell, Esq., Ball Janik LLP, Suite 225, 1455 F Street, N.W., Washington, D.C. 20005 (representing NECR, ISRR, IORY, and AA); Charles H. White, Jr., Esq., Galland, Kharasch & Garfinkle, P.C., 1054 Thirty-First Street, N.W., Washington, D.C. 20007–4492 (representing W&LE); and L. John Osborn, Sonnenschein Nath & Rosenthal, 1301 K Street, N.W., Suite 600 East, Washington, D.C. 20005 (representing CN and GTW).

In addition, one copy of all documents filed in these proceedings must be served on all other persons designated parties of record on the Board's service list in STB Finance Docket No. 33388. *See* the service list attached to Decision No. 21 (served August 19, 1997), as modified in Decision No. 27 (served September 8, 1997), and as further modified in Decision No. 43 (served October 7, 1997).[6]

FOR FURTHER INFORMATION CONTACT: Julia M. Farr, (202) 565–1613. [TDD for the hearing impaired: (202) 565–1695.]

SUPPLEMENTARY INFORMATION: In the primary application filed with the Board on June 23, 1997, primary applicants CSXC, CSXT, NSC, NSR, CRR, and CRC seek approval and authorization under 49 U.S.C. 11321–25 for: (1) The acquisition by CSX and NS of control of Conrail; and (2) the division of the assets of Conrail by and between CSX and NS. In various related filings also filed June 23, 1997, the primary applicants seek related relief contingent upon approval of the primary application. In Decision No. 12, the Board accepted for consideration the primary application and the various related filings, and directed that responsive applications be filed by October 21, 1997.

Responsive Filings: Conditions Requested.

In STB Finance Docket No. 33388 (Sub-No. 35), NYSEG seeks: (1) on behalf of NSR,[7] or a third-party carrier suitable to NYSEG, trackage rights over the CRC lines between Buffalo, NY, and NYSEG's Kintigh Station; specifically, from the Niagara Branch MP 19.0 (CP–21)[8] to the Tuscarora Wye, for approximately 4,200 feet, to Lockport Branch MP 69.6 (CP–69) to the connection with Somerset Railroad Corporation at Lockport Branch MP 58.8 (CP–59) (a total distance of approximately 11.2 miles);[9] or (2) on behalf of CSXT, or a third-party carrier suitable to NYSEG, trackage rights over the CRC lines between Buffalo, NY, and NYSEG's Milliken, Goudey, and Greenidge plants; specifically, from Chicago Line MP 1.7 (CP–DRAW) over the Bison Running Track to Southern Tier Line MP 419.8 to Binghamton MP 215.3 including Binghamton Running Track and #4 Yard Track with connections to: Vestal Industrial Track; on Vestal Industrial Track from MP 192.3 to MP 195.4; and connections to Lehigh Secondary at Southern Tier MP 255.2, Lehigh Secondary Track MP 269.5 to 271.6 and connection to Ithaca Secondary; Ithaca Secondary from MP 271.6 to the end of line at Milliken Station MP 321.0; connections to Corning Secondary at Southern Tier Line MP 290.1 and 290.8, Corning

[5] In order for a document to be considered a formal filing, the Board must receive an original and 25 copies of the document, which must show that it has been properly served on all other parties of record. Documents transmitted by facsimile (FAX) will not be considered formal filings and are not encouraged because they will result in unnecessarily burdensome, duplicative processing in what has already become a voluminous record.

[6] Members of the United States Congress and Governors are not parties of record and therefore need not be served with copies of filings, unless any such Member or Governor is designated as a party of record. *See* Decision No. 12 (served July 23, 1997, and published that day in the **Federal Register** at 62 FR 39577), slip op. at 19, 62 FR at 39588.

[7] If exercised by NSR, modification of NSR's trackage rights over CSXT and New York Central Lines LLC (NYC), as shown on pp. 220–52 and 329–35 of Volume 8B of the primary application, would also be required to eliminate any restrictions contained therein that would prevent transportation to NYSEG's Kintigh Station, including, but not confined to, limitations against interchanging with, or operating over, property of Somerset Railroad Corporation.

[8] Milepost is abbreviated MP. Control point is abbreviated CP.

[9] If exercised by a third-party carrier, these rights would include full access over: The Chicago Line between CP–2 and FW Tower (CP–437) and the Belt Line Branch owned by NYC and operated by CSX between the connection at FW Tower (CP–437), Buffalo, NY, at or near MP 0.0, and the connection with the Niagara Branch (CP–1) at or near MP 7.2, and the Niagara Branch operated by CSX between the connection with the Belt Line Branch, at or near MP 7.5, ''and to'' Tuscarora Wye to CP–69 at MP 69.6 of the Lockport Branch to MP 58.8 (CP–59) and connection track to MP 0.0 of the Somerset Railroad Corporation. This would cover a total distance of approximately 33.2 miles.

Secondary from MP 70.6 (CP–Glass) and MP 70.9 (GP–Gibson/CP–Corning) to MP 0 (CP–335), including sidings, runarounds, and passing tracks (a total distance of approximately 333.4 miles).

In STB Finance Docket No. 33388 (Sub-No. 36), EJE and IMRL seek to acquire, and thereafter to divide into two equal parts, CRC's 51% stock ownership of the Indiana Harbor Belt Railroad Company (IHB).

In STB Finance Docket No. 33388 (Sub-No. 39), LAL seeks to acquire ownership of or trackage rights on approximately 1.0 route mile of trackage constituting CRC's Genesee Junction yard in Chili, NY.

In STB Finance Docket No. 33388 (Sub-No. 59), WCL seeks to acquire from The Baltimore & Ohio Chicago Terminal Railroad Company (B&OCT, a wholly owned CSX subsidiary) a portion of B&OCT's Altenheim Subdivision, including rail line, side track, yard trackage, and associated right-of-way and appurtenances, beginning at a connection between WCL and B&OCT trackage at B&OCT MP 37.4 at Madison Street, Forest Park, IL, and extending to a point of connection with Union Pacific Railroad Company (UPRR) and Conrail's Panhandle Line in the vicinity of Rockwell Street, Chicago, IL.

In STB Finance Docket No. 33388 (Sub-No. 61), BLE seeks overhead trackage rights over: (1) CRC's Mon Line between the connection with BLE (Union Railroad Company, a BLE affiliate) at Pittsburgh (Duquesne), PA, and CRC's Shire Oaks Yard in Shire Oaks, PA (a distance of approximately 14 miles); and/or (2) CSXT's line (formerly the Pittsburgh & Lake Erie Railroad Company) between the connection with BLE (Union Railroad Company) at Bessemer (Pittsburgh), PA, and CSXT's Newell Interchange Yard near Brownsville, PA (a distance of approximately 40 miles). The overhead trackage rights sought by BLE would be restricted to the transportation of coal originating at current or future mines on the former Monongahela Railway Company lines and destined to the P&C Dock at Conneaut, OH, for movement beyond.

In STB Finance Docket No. 33388 (Sub-No. 62), IC seeks to acquire CSXT's Leewood-Aulon Line in Memphis, TN, which extends between CSXT MP F–371.4 (IC MP 387.9) at Leewood and CSXT MP F–373.4 (IC MP 390.0) at Aulon, a distance of approximately 2 miles.

In STB Finance Docket No. 33388 (Sub-No. 63), RJCW seeks to acquire ownership of or trackage rights on Conrail's line of railroad between approximately MP 54.4 and approximately MP 52.1 in Lima, OH.

In STB Finance Docket No. 33388 (Sub-No. 69), NYDOT and NYCEDC seek: (1) Full service trackage rights in favor of a rail carrier other than Conrail or CSX, to be designated jointly by NYDOT and NYCEDC, over the lines of Conrail between points of connection with the Delaware & Hudson Railway (D&H) at CP–160 near Schenectady, NY, and Selkirk Yard near Selkirk, NY, on the one hand, and, on the other, CP–75 near Poughkeepsie, NY, together with sufficient rights on tracks within Selkirk Yard to permit the efficient interchange of freight with D&H; (2) full service trackage rights in favor of a rail carrier other than Conrail or CSX, to be designated jointly by NYDOT and NYCEDC, over the lines of Conrail between the point of Conrail ownership at Mott Haven Junction (''MO''), NY, and the point of connection with the lines of the Long Island Railroad near Fresh Pond (''MONT''), NY, via the Harlem River Yard; and (3) to the extent necessary to permit uninterrupted rail freight transportation between CP–160 and/or Selkirk Yard, on the one hand, and, on the other, Fresh Pond, a declaration that, pursuant to 49 U.S.C. 11321(a), Metro-North Commuter Railroad Company, a subsidiary of the Metropolitan Transportation Authority of the State of New York, may grant unrestricted trackage rights over the lines between CP–75 and Mott Haven Junction to a rail carrier other than Conrail or CSX, notwithstanding any provisions of any agreements which purport to limit or prohibit such a grant.

In STB Finance Docket No. 33388 (Sub-No. 72), BDRV and BRW seek: (1) Removal of the restriction on certain D&H trackage rights that prevents interchange between D&H and BDRV at Phillipsburg, NJ, and between D&H and BRW at Three Bridges, NJ; (2) a grant of overhead trackage rights to BDRV over lines to be acquired by NS from Phillipsburg, NJ, to Manville, NJ (a distance of 40 miles), or to some other operationally feasible point at which BDRV and CSXT can interchange traffic; (3) a grant of overhead trackage rights to BRW over lines to be acquired by NS from Three Bridges, NJ, to Manville, NJ (a distance of 13 miles), or to some other operationally feasible point at which BRW and CSXT can interchange traffic; and (4) a grant of overhead trackage rights to BDRV and BRW over lines to be acquired by NS between the BDRV–NS connection at Phillipsburg, NJ, and the BRW–NS connection at Three Bridges, NJ (a distance of 29 miles).

In STB Finance Docket No. 33388 (Sub-No. 75), NECR seeks ''limited trackage rights'': (1) Between Palmer, MA, and West Springfield, MA, a distance of 18 miles, over the CRC line to be acquired by CSXT; (2) between West Springfield, MA, on the one hand, and, on the other, Albany, Selkirk, and Mechanicville, NY, a distance of 98 miles, over the CRC line to be acquired by CSXT; and (3) between Albany, NY, and the New Jersey/New York Shared Assets Area,[10] a distance of 140 miles, over the CRC line located on the west side of the Hudson River that is to be acquired by CSXT.[11]

In STB Finance Docket No. 33388 (Sub-No. 76), ISRR seeks: (1) Overhead trackage rights in Indianapolis, IN, between MP 6.0 on ISRR's Petersburg Subdivision and Indianapolis Power & Light's Perry K facility, over the CRC line to be acquired by CSXT; (2) overhead trackage rights in Indianapolis, IN, between MP 6.0 on ISRR's Petersburg Subdivision and Indianapolis Power & Light's Stout facility located on the line of the Indiana Rail Road Company (INRD), over a segment of the CRC line to be acquired by CSXT and a segment of the INRD line; (3) local trackage rights over CRC's lines in Indianapolis, IN, including the Indianapolis Belt Line, to be acquired by CSXT (ISRR seeks trackage rights over all CRC lines in Indianapolis needed to access the 2-to-1 shippers located in Indianapolis); (4) local trackage rights between Indianapolis and Shelbyville, IN, a distance of 27 miles, over the CRC line to be acquired by CSXT; (5) local trackage rights between Indianapolis and Crawfordsville, IN, a distance of 44 miles, over the CRC line to be acquired by CSXT; and (6) local trackage rights between Indianapolis and Muncie, IN, a distance of 55 miles, over the CRC line to be acquired by CSXT.[12]

In STB Finance Docket No. 33388 (Sub-No. 77), IORY seeks: (1) Overhead trackage rights over CSXT between East Norwood, OH, and Washington Court House, OH, a distance of 65 miles, with the right to connect at Midland City with IORY's Greenfield branch; (2) local

[10] The ''New Jersey/New York Shared Assets Area'' is apparently the area that applicants refer to as the North Jersey Shared Assets Area.

[11] NECR's use of the term ''limited trackage rights'' is intended to include: (a) The right to operate trains over the lines described in the text; and (b) the right to interchange with all carriers, including shortlines, at all junctions on the lines thus described.

[12] ISRR's use of the term ''local trackage rights'' is intended to include: (a) The right to operate trains over the lines described in the text; (b) the right to interchange with all carriers, including shortlines, at all junctions on the lines thus described; and (c) the right to serve all shippers, sidings, and team tracks located on the lines thus described.

trackage rights between Monroe, OH, and Middletown, OH, a distance of 5 miles, over the CRC line to be acquired by NSR (with the right to connect at Middletown with CSXT and IORY's existing trackage rights through Middletown over the CRC line between Springfield and Cincinnati); (3) local trackage rights between Sidney, OH, and Quincy, OH, a distance of 10 miles, over the CRC line to be acquired by CSXT; (4) local trackage rights between Sharronville, OH, and Columbus, OH, a distance of 125 miles, over the CRC line to be acquired by NSR; (5) local trackage rights between Quincy, OH, and Marion, OH, a distance of 52 miles, over the CRC line to be acquired by CSXT; (6) local trackage rights between Lima, OH, and Fort Wayne, IN, a distance of 59 miles, over the CRC line to be acquired by CSXT; (7) local trackage rights over CRC's Erie track in Lima, OH; and (8) local trackage rights between Quincy, OH, and Marysville, OH, over the CRC line to be acquired by CSXT.[13]

In STB Finance Docket No. 33388 (Sub-No. 78), AA seeks: (1) ''Limited trackage rights'' between Toledo, OH, and Chicago, IL, via Elkhart, IN, a distance of 230 miles, over the CRC line to be acquired by NS; and (2) a condition permitting AA to interchange traffic with CP Rail System at Ann Arbor, MI.[14]

In STB Finance Docket No. 33388 (Sub-No. 80), W&LE seeks: (1) Haulage and trackage rights to Chicago, IL, including access to Belt Railway of Chicago and rights for interchange with all carriers, specifically including WCL; [15] (2) haulage and trackage rights from Bellevue, OH, to Toledo, OH, a distance of 54 miles, for an interchange with the Ann Arbor Railroad, Canadian National, and the Indiana & Ohio Railroad (also including access to British Petroleum for movement of coke to Cressup, WV); (3) haulage and trackage rights to Erie, PA, with the right to interchange with other railroads; (4) the right ''to lease to own'' CRC's Randall Secondary from Cleveland, MP 2.5, to Mantua, MP 27.5; (5) the right ''to lease to own'' the Huron Branch (Shinrock to Huron) and Huron dock on Lake Erie; (6) haulage and trackage rights on CSX from Benwood to Brooklyn Junction and its yard facilities for commercial access to PPG and Bayer; (7) access on the Conrail Fort Wayne Line to the National Stone quarry near Bucyrus, via the Spore Industrial Track, a distance of 6.2 miles from CP Colsan, MP 200.5, on the Fort Wayne Line (access to the Fort Wayne line would be from the W&LE at CP Orr, MP 124, and from a point near Fairhope at MP 97.8); (8) trackage rights on the NS Sandusky District from Chatfield, OH, to Colsan, OH (for a junction with the Conrail Fort Wayne Line and access to the Spore Industrial Track); (9) access (apparently via trackage rights) to a stone quarry located on the Northern Ohio Railway at Maple Grove, via a junction on the NS Fostoria District at MP 269.4; (10) access (apparently via trackage rights over, among other lines, the former Conrail Akron Secondary) to the stone terminals in the Macedonia, Twinsburg, and Ravenna areas; (11) access, via haulage and trackage rights, to Wheeling Pittsburgh Steel at Allenport, PA; and (12) access, via haulage and trackage rights on the CSX New Castle Subdivision, to the Ohio Edison Power plant at Niles, OH, and to Erie, PA, for interchange to the Buffalo & Pittsburgh. W&LE also requests that provision be made for an inclusion proceeding in the event that W&LE fails during a post-merger oversight period.[16]

In STB Finance Docket No. 33388 (Sub-No. 81), CN and GTW seek trackage rights over the Conrail northbound mainline between approximately MP 16.5 and MP 18.0 at Trenton, MI, a distance of approximately 1.5 miles, for the purpose of serving Detroit Edison's Trenton Channel power plant.

In STB Finance Docket No. 33388 (Sub-No. 83), GTW has filed a notice of exemption under 49 CFR 1150.36 to construct and operate, at Trenton, MI, a connection between the Conrail northbound mainline and the GTW Shoreline Subdivision.

Responsive Filings Accepted

Because the responsive applications filed by NYSEG, EJE/IMRL, LAL, WCL, BLE, IC, RJCW, NYDOT/NYCEDC, BDRV/BRW, NECR, ISRR, IORY, AA, W&LE, and CN/GTW, and also the notice of exemption filed by GTW, are in substantial compliance with the applicable regulations, we are accepting for consideration such responsive applications and such notice of exemption.[17]

Public Inspection

The responsive filings are available for inspection in the Docket File Reading Room (Room 755) at the offices of the Surface Transportation Board, 1925 K Street, N.W., in Washington, DC. The responsive filing made by any particular responsive applicant may also be obtained upon request from that applicant's representative named above.

Proceedings Consolidated

The responsive filings in STB Finance Docket No. 33388 (Sub-Nos. 35, 36, 39, 59, 61, 62, 63, 69, 72, 75, 76, 77, 78, 80, 81, and 83) are consolidated for disposition with the primary application in STB Finance Docket No. 33388 (and all embraced proceedings).

Comments May Be Submitted

Interested persons may participate formally by submitting written comments regarding any or all of these responsive filings, subject to the filing and service requirements specified above. Such comments (referred to as ''Response[s]'' in the procedural schedule, *see* Decision No. 12, slip op. at 26, 62 FR at 39591) must be filed with the Board by December 15, 1997. Comments must include the following: the commenter's position in support of or in opposition to the transaction proposed in the responsive filing; any and all evidence, including verified statements, in support of or in opposition to such proposed transaction; and specific reasons why approval of such proposed transaction would or would not be in the public interest.

Requests for Affirmative Relief Will Not Be Accepted

Because the responsive applications accepted for consideration in this decision contain proposed conditions to approval of the primary application in STB Finance Docket No. 33388, the Board will entertain no requests for affirmative relief with respect to these responsive applications. Parties may only participate in direct support of or in direct opposition to these responsive applications as filed.

[13] IORY's use of the term ''local trackage rights'' is intended to include: (a) The right to operate trains over the lines described in the text; (b) the right to interchange with all carriers, including shortlines, at all junctions on the lines thus described; and (c) the right to serve all shippers, sidings, and team tracks located on the lines thus described.

[14] AA's use of the term ''limited trackage rights'' is intended to include: (a) The right to operate trains over the line described in the text; and (b) the right to interchange with all carriers, including shortlines, at all junctions on the line thus described.

[15] These rights would apparently run between Chicago, on the west, and Carey and/or Bellevue, OH, on the east.

[16] Various additional W&LE condition requests are scattered throughout the verified statements submitted by W&LE witnesses in the WLE–4 pleading filed October 21, 1997.

[17] We reserve the right to require the filing of supplemental information from any responsive applicant or any other party or individual, if necessary to complete the record in this matter. *See* Decision No. 12, slip op. at 18 n.29, 62 FR at 39587 n.29.

Pleadings Not Treated as Responsive Applications

A pleading styled as a ''responsive application'' was filed on October 21, 1997, in a sub-number docket (Sub-No. 74) under the STB Finance Docket No. 33388 lead docket by Congressman Dennis J. Kucinich. While titled as a responsive application, this pleading does not address the criteria for such applications as required under 49 CFR part 1180. Rather, this pleading constitutes a comment on, and a request for conditions with respect to, the CSX/NS/CR primary application, and we will treat it as such and will docket this pleading in the STB Finance Docket No. 33388 lead docket.

Certain additional pleadings styled as ''responsive applications'' were filed in the STB Finance Docket No. 33388 lead docket on or about October 21, 1997, by: Jacobs Industries Ltd.; the State of Delaware Department of Transportation; ASHTA Chemicals Inc.; Southern Tier West Regional Planning and Development Board; and Resources Warehousing & Consolidation Services, Inc. Because these pleadings also do not satisfy the 49 CFR part 1180 requirements applicable to responsive applications, we will treat these pleadings as comments on, and/or requests for conditions with respect to, the CSX/NS/CR primary application.

Additional Pleadings Treated as Filed in Lead Docket

Certain additional pleadings filed on or about October 21, 1997, though not labeled ''responsive applications,'' were filed in various sub-number dockets under the STB Finance Docket No. 33388 lead docket by: Northern Virginia Transportation Commission and Potomac and Rappahannock Transportation Commission (in Sub-No. 37); New Jersey Department of Transportation and New Jersey Transit Corporation (in Sub-No. 38); the Rhode Island Department of Transportation (in Sub-No. 42); Buffalo & Pittsburgh Railroad, Inc., Allegheny & Eastern Railroad, Inc., Rochester & Southern Railroad, Inc., and Pittsburgh & Shawmut Railroad, Inc. (in Sub-Nos. 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, and 56); the Eastern Shore Railroad, Inc. (in Sub-No. 57); Louisville & Indiana Railroad Company (in Sub-No. 64); Housatonic Railroad Company, Inc. (in Sub-No. 70); the Canadian Pacific Railway Company, Delaware and Hudson Railway Company, Inc., Soo Line Railroad Company, and St. Lawrence & Hudson Railway Company Limited (in Sub-No. 85); and the Commonwealth of Massachusetts (in Sub-No. 86). Because these pleadings contain comments on, and/or requests for conditions with respect to, the CSX/NS/CR primary application, they will be docketed in, and they will be treated as having been filed in, the STB Finance Docket No. 33388 lead docket.

Electronic Submissions

In addition to submitting an original and 25 paper copies of each document filed with the Board, parties are also requested to submit, on diskettes (3.5-inch IBM-compatible floppies) or compact discs, one electronic copy of each such document. Textual materials must be in, or be convertible by and into, WordPerfect 7.0. Spreadsheets must be in, or be convertible by and into, Lotus 1–2–3 Version 7.[18] Each diskette or compact disc should be clearly labeled with the identification acronym and number of the corresponding paper document, *see* 49 CFR 1180.4(a)(2), and a copy of such diskette or compact disc should be provided to any other party upon request. The data contained on the diskettes and compact discs submitted to the Board will be subject to the protective order applicable to this proceeding,[19] and will be for the exclusive use of Board employees reviewing substantive and/or procedural matters in this proceeding. The flexibility provided by such computer data will facilitate timely review by the Board and its staff.[20]

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The responsive applications in STB Finance Docket No. 33388 (Sub-Nos. 35, 36, 39, 59, 61, 62, 63, 69, 72, 75, 76, 77, 78, 80, and 81), and the notice of exemption in STB Finance Docket No. 33388 (Sub-No. 83), are accepted for consideration, and are consolidated for disposition with the primary application in STB Finance Docket No. 33388 (and all embraced proceedings).

2. The parties shall comply with all provisions as stated above.

3. This decision is effective on November 20, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.

Decided: November 12, 1997.

Vernon A. Williams,

Secretary.

[FR Doc. 97–30543 Filed 11–19–97; 8:45 am]

BILLING CODE 4915–00–P

[18] Parties intending to submit spreadsheets in formats other than Lotus 1–2–3 Version 7 may wish to consult with our staff regarding such submissions. Some (though not all) spreadsheets prepared in other formats, though perhaps not convertible by and into Lotus 1–2–3 Version 7, may nevertheless be useable by our staff. For further information, contact Julia M. Farr, (202) 565–1613.

[19] The protective order governing this proceeding was entered in Decision No. 1 (served April 16, 1997), and has been modified, in minor respects, in Decision Nos. 4, 15, 22, and 46 (served May 2, 1997, August 1, 1997, August 21, 1997, and October 17, 1997, respectively).

[20] The electronic submission requirements set forth in this decision supersede, for the purposes of this proceeding, the otherwise applicable electronic submission requirements set forth in our regulations. *See* 49 CFR 1104.3(a), as amended in *Expedited Procedures for Processing Rail Rate Reasonableness, Exemption and Revocation Proceedings,* STB Ex Parte No. 527, 61 FR 52710, 52711 (Oct. 8, 1996), 61 FR 58490, 58491 (Nov. 15, 1996).

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

November 10, 1997.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Bureau of the Public Debt (BPD)

OMB Number: 1535–0089.

Form Number: None.

Type of Review: Extension.

Title: Implementing Regulations: Government Securities Act of 1986, As Amended.

Description: The regulations require government securities broker/dealers to make and keep certain records concerning government securities activities, to submit financial reports and make certain disclosures to investors. The regulations also require financial depository institutions to keep certain records of non-fiduciary custodial holdings of government securities. The regulations and associated collections are fundamental to customer protection and financial responsibility.

Respondents: Business or other for-profit.

Estimated Number of Recordkeepers: 35,506.

Frequency of Response: On occasion, Monthly, Quarterly, Annually, Other (one-time file).

Estimated Total Recordkeeping Burden: 393,667 hours.

Clearance Officer: Vicki S. Thorpe (304) 480–6553, Bureau of the Public Debt, 200 Third Street, Parkersburg, West VA 26106–1328.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 97–30511 Filed 11–19–97; 8:45 am]

BILLING CODE 4810–40–P

DEPARTMENT OF THE TREASURY

Submission to OMB for Review; Comment Request

November 13, 1997.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, D.C. 20220.

Correction

This is a correction to FR Doc. 97–29313, Filed 11–05–97; 8:45 a.m., for a Department of the Treasury, Internal Revenue Service information collection. The corrected information is as follows:

OMB Number: 1545–0946.

Form Number: IRS Form 8554.

Type of Review: Revision.

Title: Application for Renewal of Enrollment to Practice Before the Internal Revenue Service.

The OMB Number was incorrectly typed as 1545–0794.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 97–30512 Filed 11–19–97; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

November 14, 1997.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Special Request

In order to conduct the survey described below in December 1997 timeframe, the Department of the Treasury is requesting that the Office of Management and Budget (OMB) review and approve this information collection by November 26, 1997. To obtain a copy of this study, please contact the Internal Revenue Service Clearance Officer at the address listed below.

Internal Revenue Service (IRS)

OMB Number: 1545–1432.

Project Number: M:SP:V 97–028–G.

Type of Review: Revision.

Title: Atlanta District Office Research and Analysis (DORA) Automated Collection Branch (ACS)—Conflict Management Initiative (CMI) Telephone Survey.

Description: The goal is to use this strategy to help IRS meet its business objectives and improve the quality of work life for its employees.

Respondents: Individuals or households.

Estimated Number of Respondents: 1,280.

Estimated Burden Hours Per Response: 3 minutes.

Frequency of Response: Other (one time only).

Estimated Total Reporting Burden: 64 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, N.W., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 97–30513 Filed 11–19–97; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Customs Service

Modification of National Customs Automation Program Test Regarding Reconciliation

AGENCY: Customs Service, Treasury.

ACTION: Notice of additional comment period.

SUMMARY: A notice published in the **Federal Register** on September 30, 1997, announced changes to Customs prototype test of Reconciliation. Public comments were requested by November 14, 1997. This document sets an additional comment period for submitting comments on that notice.

DATES: Written comments regarding the notice of September 30 , 1997, are now being accepted through December 15, 1997.

ADDRESSES: Comments should be addressed to Ms. Shari McCann, Reconciliation Team, U.S. Customs Service, 1300 Pennsylvania Avenue, NW, Mailstop 5.2A, Washington, D.C. 20229–0001.

FOR FURTHER INFORMATION CONTACT: Ms. Shari McCann at (202) 927–1106 or Mr. Don Luther at (202) 927–0915.

SUPPLEMENTARY INFORMATION:

Background

A document published in the **Federal Register** (62 FR 51181) on September 30, 1997, notified the trade community of changes to the prototype National Customs Automation Program test of reconciliation, set forth the policy which makes the NCAP prototype the exclusive means to reconcile entries pursuant to 19 U.S.C. 1484(b) and announced that the prototype will henceforth be referred to as the Automated Commercial System (ACS) Reconciliation Prototype. That notice invited public comments concerning any aspect of the planned test, informed interested members of the public of the requirements for voluntary participation, and established the process for developing evaluation criteria.

Public comments were requested by November 14, 1997. Due to a public meeting (see notice published in the **Federal Register** (62 FR 58769) published on October 30, 1997) which included discussions of the Prototype, an additional comment period is being granted to allow persons to comment with these discussions in mind. Comments are now being requested by December 15, 1997.

Dated: November 17, 1997.

John Durant,

Director, Mod Act Task Force.

[FR Doc. 97–30557 Filed 11–19–97; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Notice 97–64

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Notice 97-64, Temporary regulations to be issued under section 1(h) of the Internal Revenue Code (applying section 1(h) to capital gain dividends of RICs and REITs).

DATES: Written comments should be received on or before January 20, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Temporary regulations to be issued under section 1(h) of the Internal Revenue Code (applying section 1(h) to capital gain dividends of RICs and REITs).

OMB Number: 1545–1565.

Notice Number: Notice 97–64.

Abstract: Notice 97–64 provides notice of forthcoming temporary regulations that will permit Regulated Investment Companies (RICs) and Real Estate Investment Trusts (REITs) to distribute multiple classes of capital gain dividends.

Current Actions: There are no changes being made to the notice at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, and individuals.

Estimated Number of Respondents: 3,000.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 1,500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 13, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97–30551 Filed 11–19–97; 8:45 am]

BILLING CODE 4830–01–U

UNITED STATES INFORMATION AGENCY

Edmund S. Muskie and Freedom Support Act Graduate Fellowship Programs

ACTION: Request for proposals.

SUMMARY: Subject to the availability of funds, the Office of Academic Programs, Academic Exchange Programs Division, European Programs Branch of the United States Information Agency's Bureau of Educational and Cultural Affairs announces an open competition for an assistance award. Public and private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501(c) may apply to administer the recruitment, selection, placement, monitoring, evaluation, and follow-on activities for the FY 1999 Edmund S. Muskie and Freedom Support Act Graduate Fellowship Programs. Organizations with less than four years of experience in conducting international exchange programs are not eligible for this competition.

The Edmund S. Muskie and Freedom Support Act Graduate Fellowship Programs (herein to be referred to as the Muskie/FSA Programs) select outstanding citizens of the New Independent States (NIS) and the Baltics to receive scholarships for Master's level study and professional development in the United States in the fields of business administration, economics, education administration, law with a new subfocus in law pedagogy, library and information science, mass communication/journalism, public administration with specialized programs in public health and environmental management, and public policy. Fellowships are awarded to qualified young and mid-career individuals who are citizens of Armenia, Azerbaijan,* Belarus, Estonia, Georgia, Kazakstan, Kyrgyzstan, Latvia, Lithuania, Moldova, the Russian Federation, Tajikistan, Turkmenistan, Ukraine, or Uzbekistan. Edmund S. Muskie fellows enroll in graduate degree, certificate, and non-degree programs lasting one-to-two academic years. It is estimated that approximately 245–255 Fellows will participate in the 1999 program. Interested organizations should read the complete **Federal Register** announcement and request a Solicitation Package from the USIA prior to preparing a proposal.

*** Please note:** Programs with Azerbaijan are subject to restrictions of Section 907 of the Freedom Support Act: Employees of the Government of Azerbaijan or any of its instrumentalities are excluded from participation, and no U.S. participant overseas may work for the Government of Azerbaijan or any of its instrumentalities. In addition, the Government of Azerbaijan or any of its instrumentalities will have no control in the actual selection of participants.

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Pub. L. 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the

Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations . . . and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.''

Programs and projects must conform with Agency requirements and guidelines outlined in the Solicitation Package. USIA projects and programs are subject to the availability of funds.

Announcement Title and Number: All communications with USIA concerning this RFP should refer to the announcement's title and reference number E/AEE–99–02.

Deadline For Proposals: All copies must be received at the U.S. Information Agency by 5 p.m. Washington, D.C. time on Thursday, March 26, 1998. Faxed documents will not be accepted at any time. Documents postmarked by the due date but received at a later date will not be accepted.

FOR FURTHER INFORMATION CONTACT: The Office of Academic Programs, European Programs Branch of the U.S. Information Agency, 301 4th Street, S.W., Washington, D.C. 20547, (P) 202–205–0525 (F) 202–260–7985 (E-Mail) treed@usia.gov to request a Solicitation Package containing more detailed. Please request required application forms, and standard guidelines for preparing proposals, including specific criteria for preparation of the proposal budget.

To Download a Solicitation Package Via Internet: The entire Solicitation Package may be downloaded from USIA's website at http://www.usia.gov/education/rfps. Please read all information before downloading.

To Receive a Solicitation Package Via Fax On Demand: The entire Solicitation Package may be received via the Bureau's ''Grants Information Fax on Demand System'', which is accessed by calling 202/401–7616. Please request a ''Catalog'' of available documents and order numbers when first entering the system.

Please specify USIA Senior Program Manager Ted Kniker on all inquiries and correspondence. Interested applicants should read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFP deadline has passed, Agency staff may not discuss this competition in any way with applicants until the Bureau proposal review process has been completed.

Submissions: Applicants must follow all instructions given in the Solicitation Package. The original and 14 copies of the application should be sent to: U.S. Information Agency, Ref.: E/AEE–99–01, Office of Grants Management, E/XE, Room 326, 301 4th Street, S.W., Washington, D.C. 20547.

Applicants must also submit the ''Executive Summary'' and ''Proposal Narrative'' sections of the Proposal on a 3.5'' diskette, formatted for DOS. This material must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. USIA will transmit these files electronically to USIS posts overseas for their review, with the goal of reducing the time it takes to get posts' comments for the Agency's grants review process.

Diversity, Freedom and Democracy Guidelines: Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. *Diversity* should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into the total proposal. Pub. L. 104–319 provides that ''in carrying out programs of education and cultural exchange in countries whose people do not fully enjoy freedom and democracy'', USIA ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Proposals should account for advancement of this goal in their program contents, to the full extent deemed feasible.

SUPPLEMENTARY INFORMATION:

Overview

The Muskie/FSA Fellowship Programs are designed to foster democratization and the transition to market economies in the former soviet Union and Baltic States through intensive academic and professional training. Since the programs' inceptions in fiscal years 1992 and 1993, over 900 Fellowships have been awarded. The academic component of the program begins in the fall semester of the year of the award and follows the normal one- to two-year academic cycle in which Fellows may take a nine, twelve, eighteen, or twenty-four month academic program. Fellows take part in a eight- to twelve-week internship during the summer following the first academic year. While fellows are closely assisted in their internship search by host institutions, sponsoring organizations, and USIA, the primary responsibility for securing appropriate internships remains with the Fellows. Fellows placed in one-year graduate programs return home at the conclusion of their internship. Fellows placed in two year graduate programs return to their academic placement following the internship. The Muskie/FSA Programs are not intended as a precursor to doctoral studies, extended professional training, or employment in the United States. At the end of their designated academic and internship programs, Fellows are required to immediately return to their home countries.

In the past, the Muskie/FSA Programs have been administered by up to four organizations working in close partnership for all phases of the program. In order to maintain efficient administration of the program the number of organizations administering the Muskie/FSA Programs may remain at two or three. Should an applicant organization prefer to work with other organizations in the implementation of this program, USIA prefers that a subcontract arrangement be developed. USIA will entertain separately submitted proposals from two or more organizations for joint program management, but the proposals must demonstrate a value-added relationship, and must clearly delineate responsibilities so as not to duplicate efforts.

Proposing organizations must demonstrate the ability to administer all aspects of the Muskie/FSA Programs—advertisement, recruitment, selection, placement, orientation, Fellow monitoring and support, financial management, evaluation, follow-on, and alumni tracking and programing. Applicant organizations must demonstrate the ability to recruit and select a diverse pool of candidates from various geographic regions in the NIS and Baltics. Additionally, organizations will be asked to assist in the recruitment and selection of appropriate host institutions from throughout the United States for pre-academic, ESL, and academic programs. Administering organizations will act as the principle liaison with Muskie/FSA host

institutions. Additionally, organizations should demonstrate the ability to work with private sector organizations in the United States, NIS and Baltics to facilitate Fellows' professional development and post-program re-entry. Further details on specific program responsibilities can be found in the Project Objectives, Goals, and Implementation (POGI) Statement which is part of the formal Solicitation Package available from the USIA.

Awards will begin on or about October 1, 1998 and will be approximately three years in duration. Initial recruitment and selection activities may be performed in conjunction with the current administering organizations.

Guidelines

Programs must comply with J–1 visa regulations. Please refer to program specific guidelines (POGI) in the Solicitation Package for further details.

The level of funding for fiscal year 1999 is uncertain, but is anticipated to be a total of $13 million.

Proposed Budget

Organizations must submit a comprehensive line item budget based on the specific guidance in the Solicitation Package. There must be a summary budget as well as a break-down reflecting both the administrative budget and the program budget. Organizations whose proposals include an administrative budget that is less than 20% of the grant amount requested from the USIA will be given preference. Detailed guidance on budget preparation is included in the Project Objectives, Goals and Implementation (POGI) and PSI. Please refer to the complete Solicitation package for complete budget guidelines and formatting instructions.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will be reviewed by the program office, as well as the USIA Office of Eastern Europe and NIS Affairs and the USIA post overseas, where appropriate. Proposals may be reviewed by the Office of the General Counsel or by other Agency elements. Funding decisions are at the discretion of the USIA Associate Director for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the USIA grants officers.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. Quality of the program plan: Proposed programs should include academic rigor, thorough conception of project, demonstration of meeting participants needs, contributions to understanding the partner country, proposed alumni activities, specific details of recruitment, selection and monitoring processes, a thorough evaluation plan, proposed follow-on, and relevance to USIA's mission.

2. Program planning and institutional capacity: A detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. Proposals should clearly demonstrate how the institution and its staff will meet the program objectives and plan.

3. Track record: Relevant USIA and outside assessments of the organization's experience with international exchanges.

4. Multiplier effect/impact: Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages.

5. Value of U.S.-Partner Country relations: The assessment by USIA's geographic area office of the need, potential impact, and significance of the project with the partner countries.

6. Cost-effectiveness: A key measure of cost effectiveness is the unit cost to the Agency. This is the total request of USIA monies divided by the number of Fellow months (number of Fellows multiplied by the number of program months). The overhead and administration components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate.

7. Cost-sharing: Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

8. Support of diversity: Preference will be given to proposals that demonstrate efforts to provide for the participation of students with a variety of major disciplines, from diverse regions, and of different socio-economic and ethnic backgrounds, to the extent feasible for the applicant institutions. The Agency will seek to achieve maximum geographic diversity in recruitment, selection, and placement of participants through its award of grants.

9. Follow-on activities: Proposals should provide a plan for continued follow-on activity (without USIA support) which ensures that USIA supported programs are not isolated events. Proposals should include a plan for alumni tracking and coordination that demonstrates the willingness to provide data to and coordinate tracking with USIA and USIS Posts overseas. Due to the reduction in available funds, preference will be given to applicant organizations who can fund alumni activities, with minimal grant funded contributions from the USIA.

10. Project evaluation: Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. A draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives is recommended. Successful applicants will be expected to submit intermediate reports after each project component is concluded or quarterly, whichever is less frequent.

Notice

The terms and conditions published in the RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The Agency reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Options for Renewals

Subject to the availability of funding for FY 2000 and the satisfactory performance of grant programs, USIA may invite grantee organizations to submit proposals for renewals of awards for two fiscal year cycles.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal USIA procedures.

Dated: November 14, 1997.

Robert L. Earle,

Deputy Associate Director for Educational and Cultural Affairs.

[FR Doc. 97–30522 Filed 11–19–97; 8:45 am]

BILLING CODE 8230–01–M

UNITED STATES INFORMATION AGENCY

Edmund S. Muskie and Freedom Support Act Graduate Fellowship Programs Host Institution Competition

ACTION: Notice announcements.

SUMMARY: Subject to the availability of funds, the Office of Academic Programs, European Branch, of the United States Information Agency's Bureau of Educational and Cultural Affairs announces opportunities for regionally and professionally accredited U.S. institutions offering degree programs at the master's level in business administration, education administration, economics, journalism/mass communications, law, library and information science, public administration, public health, and public policy to host graduate students from Armenia, Azerbaijan*, Belarus, Estonia, Georgia, Kazakstan, Krygystan, Latvia, Lithuania, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan for one- to two-year degree programs under the auspices of the 1998 Edmund S. Muskie and Freedom Support Act Graduate Fellowship Programs.

Application Information

The Edmund S. Muskie and Freedom Support Act (FSA) Graduate Fellowship Programs are comprised of one- to two-year Master's-level academic programs and a three-month internship program. Pending available funding, the 1998 Muskie and FSA Graduate Fellowship Programs will be administered with USIA through cooperative agreements with the American Council of Teachers of Russian/American Council for Collaboration in Education and Language Study (ACTR/ACCELS) and the Open Society Institute (OSI). Under these agreements ACTR and Soros/OSI will be responsible for recruitment, selection, academic placement, and monitoring of Fellows. Interested institutions should contact these organizations for additional program and application information:

For programs in Business Administration, Economics, Library and Information Science, Public Administration, and Public Policy: Susan Frarie, ACTR/ACCELS, 1776 Massachusetts Avenue, N.W., Suite 700, Washington, DC 20036, *Tel:* (202) 833–7522, *Fax:* (202) 833–7523, *E-Mail:* frarie@actr.org.

For programs in Law, Education Administration, Journalism/Mass Communications, and Public Health: Sofia Skindrud, Scholarships Department, The Open Society Institute, 400 West 59th Street, New York, NY 10019, *Tel:* (212) 548–0600, *Fax:* (212) 548–4679, *Email:* sskindrud@sorosny.org.

Current host institutions should contact the above organizations for renewal applications.

All organizations must be received at the appropriate organization by 5 p.m. Washington, D.C. time on Friday, February 20, 1998. Faxed documents will not be accepted at any time. Documents postmarked by the due date but received at a later date will not be accepted.

Additional Information

Increases in program expenses with reduced overall government funding for exchange programs make cost sharing arrangements with those institutions a critical part of the Muskie and FSA Graduate Fellowship Programs. Preference will be given to institutions that can provide cost-sharing toward tuition, fees, and/or room and board expenses. Cost-sharing may also be in the form of other direct program and participant costs.

The Edmund S. Muskie and Freedom Support Act Graduate Fellowship Programs are not intended as precursors to doctoral studies in the United States. At the end of their designated academic and internship programs, Fellows are required to return to their home countries to fulfill the two-year home residency requirement as specified in the Exchange Visitor (J-Visa) regulations and the Muskie and the FSA Graduate Fellowship Programs Terms and Conditions.

ACTR/ACCELS and OSI will not approve the transfer of visa sponsorship to universities or the extensions of visas for the purpose of Ph.D. Programs, extended practical training, or other additional academic study. Universities that do not comply with the policies of the Muskie and FSA Graduate Fellowship Programs and the J-Visa regulations will be removed from the pool of host institutions.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principal both in programs administration and in program content. Please refer to the review criteria under the ''Support for Diversity'' section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy'', USIA ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Proposals should account for advancement of this goal in their program contents, to the full extend deemed feasible.

*** Please Note:** Programs with Azerbaijan are subject to restrictions of section 907 of the Freedom Support Act: Employees of the Government of Azerbaijan or any of its instrumentalities are excluded from participation, and no U.S. participant overseas may work for the Government of Azerbaijan or any of its instrumentalities. In addition, the Government of Azerbaijan or any of its instrumentalities will have no control in the actual selection of participants.

Dated: November 14, 1997.

Robert L. Earle,

Deputy Associate Director for Educational and Cultural Affairs.

[FR Doc. 97–30524 Filed 11–19–97; 8:45 am]

BILLING CODE 8230–01–M

UNITED STATES INFORMATION AGENCY

Freedom Support Act Undergraduate Program

ACTION: Request for proposals.

SUMMARY: Subject to the availability of funds, the Academic Exchanges Division, European Programs Branch of the United States Information Agency's Bureau of Educational and Cultural Affairs announces an open competition for an assistance award. Public and private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501(c) may apply to develop a program to recruit in an open, multinational competition and provide 225 to 250 students from the New Independent States of the former Soviet Union with full scholarships for one year of non-degree, undergraduate study at regionally and professionally accredited two- and four-year institutions throughout the United States in the fields of agriculture, business, computer science, criminal justice studies, economics, education, environmental management, EFL/TEFL,

journalism and mass communication, library and information science, political science, public health, and sociology.

USIA anticipates awarding one grant for this program. Should an applicant organization wish to work with other organizations in the implementation of this program, USIA prefers that a subcontract arrangement be developed. USIA will entertain separately submitted proposals for joint program management, and the proposals must demonstrate a value-added relationship, and must clearly delineate responsibilities so as not to duplicate efforts.

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Pub. L. 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and other countries of the world.'' The funding authority for the program cited above is provided through the Freedom Support Act.

Programs and projects must conform with Agency requirements and guidelines outlined in the Solicitation Package. USIA programs are subject to the availability of funds.

Announcement Title and Number: All communications with USIA concerning this RFP should refer to the announcement's title and reference number *E/AEE–99–01.*

Deadline for Proposals: All copies must be received at the U.S. Information Agency by 5 p.m. Washington, D.C. time on *Friday, March 6, 1998.* Faxed documents will not be accepted at any time. Documents postmarked by the due date but received at a later date will not be accepted. Grants should begin October 1998.

FOR FURTHER INFORMATION, CONTACT: The Academic Exchange Division, European Programs Branch, E/AEE, Room 246, U.S. Information Agency, 301 4th Street, S.W., Washington, D.C. 20547, telephone (202) 205–0525 and fax (202) 260–7985, treed@usia.gov to request a Solicitation Package containing more detailed information. Please request required application forms, and standard guidelines for preparing proposals, including specific criteria for preparation of the proposal budget.

To Download a Solicitation Package via Internet: The entire Solicitation Package may be downloaded from USIA's website at http://www.usia.gov/education/rfps. Please read all information before downloading.

To Receive a Solicitation Package via Fax on Demand: The entire Solicitation Package may be received via the Bureau's ''Grants Information Fax on Demand System'', which is accessed by calling 202/401–7616. Please request a ''Catalog'' of available documents and order numbers when first entering the system.

Please specify USIA Program Officer *Jill Jarvi* on all inquiries and correspondences. Interested applicants should read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFP deadline has passed, Agency staff may not discuss this competition in any way with applicants until the Bureau proposal review process has been completed.

Submissions: Applicants must follow all instructions given in the Solicitation Package. The original and *nine* copies of the application should be sent to: U.S. Information Agency, Ref.: *E/AEE–99–01,* Office of Grants Management, E/XE, Room 326, 301 4th Street, S.W., Washington, D.C. 20547.

Applicants must also submit the ''Executive Summary'' and ''Proposal Narrative'' sections of the proposal on a 3.5″ diskette, formatted for DOS. This material must be provided in ASCII text (DOS) format with a maximum line length of 56 characters. USIA will transmit these files electronically to USIS posts overseas for their review, with the goal of reducing the time it takes to get posts' comments for the Agency's grants review process.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representive of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the ''Support for Diversity'' section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy'', USIA ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Proposals should account for advancement of this goal in their program contents, to the full extent deemed feasible.

SUPPELEMENTARY INFORMATION:

Overview

The purpose of the program is to support the economic and democratic development of the New Independent States of the former Soviet Union through exposing undergraduate students from the NIS to key transition fields and enhancing their academic education with practical training and involvement in a U.S. community.

Guidelines

Programs must comply with J–1 visa regulations. Please refer to program specific guidelines (POGI) in the Solicitation Package for further details. Administration of the program must be in compliance with reporting and withholding regulations for federal, state and local taxes as applicable. Recipient organizations should demonstrate tax regulation adherence in the proposal narrative and budget.

Dfafts of all printed materials developed for this program should be submitted to the Agency for review and approval. All official documents should highlight the U.S. government's role as program sponsor and funding source. The USIA requests that it receive the copyright use and be allowed to distribute the material as it sees fit.

Proposed Budget

Organizations must submit a comprehensive line item budget based on the specific guidance in the Solicitation Package. Awards may not exceed *$3.75 million,* and preference will be given to organizations whose requested administrative and indirect costs are below 20% of the total grant award. Grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000.

Applicants must submit a comprehensive budget for the entire program. There must be a summary budget as well as a breakdown reflecting

both the administrative budget and the program budget. For further clarification, applicants may provide separate sub-budgets for each program component, phase, location, or activity in order to facilitate USIA decisions on funding.

Allowable costs for the program include the following:

(1) U.S.-based administrative costs.

(2) NIS-based administrative costs.

(3) Program costs.

(4) Start up recruitment costs for FY 2000.

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will be reviewed by the program office, as well as the USIA Office of and Eastern Europe and NIS Affairs the USIA post overseas, where appropriate. Proposals may be reviewed by the Office of the General Counsel or by other Agency elements. Funding decisions are at the discretion of the USIA Associate Director for Education and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the USIA grants officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. Program Development and Management

Proposals should exhibit originality, substance, precision, innovation, and relevance to Agency mission. Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the organization will meet the program's objectives. A detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above.

2. Multiplier Effect/Impact

Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages. Proposals should also include creative ways to involve students in their U.S. communities.

3. Support of Diversity

Proposals should demonstrate the recipient's commitment to promoting the awareness and understanding of diversity, and should include a strategy for achieving diverse applicant pools for both students and host institutions.

4. Institution's Record/Ability

Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Agency grants as determined by USIA's Office of Contracts. The Agency will consider the past performance of prior recipients and the demonstrated potential of new applicants. Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals.

5. Follow-on and Alumni Activities

Proposals should provide a plan for continued follow-on activity (without USIA support) which insures that USIA supported programs are not isolated events.

6. Project Evaluation

Proposals should include a plan to evaluate the program's success, both during and after the program. USIA recommends that the proposal include a draft survey questionnaire or other technique, plus a description of methodologies that can be used to link outcomes to original project objectives. Award-receiving organizations/institutions will be expected to submit intermediate reports after each project component is concluded or quarterly, whichever is less frequent.

7. Cost-Effectiveness and Cost Sharing

The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate. Proposals should maximize cost sharing through other private sector support as well as institutional direct funding contributions.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The Agency reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal USIA procedures.

Option for Renewals

Subject to the availability of funding for FY 2000 and FY 2001, and the satisfactory performance of grant programs, USIA may invite grantee organizations to submit proposals for renewals of awards.

Dated: November 14, 1997.

Robert L. Earle,

Deputy Associate Director for Educational and Cultural Affairs.

[FR Doc. 97–30523 Filed 11–19–97; 8:45 am]

BILLING CODE 8230–01–M

UNITED STATES INFORMATION AGENCY

NIS College and University Partnerships Program

ACTION: Request for proposals.

SUMMARY: The Office of Academic Programs of the United States Information Agency's Bureau of Educational and Cultural Affairs announces an open competition for an assistance award program. Accredited, post-secondary educational institutions meeting the provisions described in IRS regulation 26 CFR 1.501(c) may apply to develop a partnership with (a) foreign institution(s) of higher education from the New Independent States in specified fields.

Proposed projects must be eligible in terms of countries/localities and disciplines as described in the section entitled ''Eligibility'' below.

Participating institutions exchange faculty and administrators for a combination of teaching, lecturing, faculty and curriculum development, collaborative research, and outreach, for periods ranging from one week (for planning visits) to an academic year. The FY 98 program will also support the establishment and maintenance of Internet and/or e-mail communication facilities as well as interactive distance learning programs at foreign partner institutions. Applicants may propose

other project activities not listed above that are consistent with the goals and activities of the NIS College and University Partnerships Program.

Please note that USIA's NIS College and University Partnership Program (NISCUPP) is intended exclusively for college and university partnerships throughout the NIS in the following fields: law, business/economics, education, public administration/public policy/government/urban and regional economic development, journalism/communications. The United States Agency for International Development (USAID) and the International Research and Exchanges Board (IREX) have issued a request for proposals to strengthen existing partnerships between U.S. and Russian organizations—the Sustaining Partnerships into the Next Century (SPAN) program.

In order to effectively distribute assistance funding and avoid duplication of efforts, colleges and universities interested in applying for partnerships in the fields listed above should apply for funding under USIA's NISCUPP program. Colleges and universities interested in other fields, and all other relevant partnerships, should apply to the SPAN program administered by USAID and IREX. USIA and USAID missions will jointly review proposals from colleges and universities.

The program awards up to $300,000 for a three-year period to defray the cost of travel and per diem with an allowance for educational materials and some aspects of project administration. Grants awarded to organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000.

Overall grant-making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Pub. L. 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.'' The funding authority for the program cited above is provided through the Freedom for Russia and Emerging Eurasian Democracies and Open Markets Support Act of 1992 (Freedom Support Act). Programs and projects must conform with Agency requirements and guidelines outlined in the Solicitation Package. USIA projects and programs are subject to the availability of funds.

Announcement Title and Number

All communications with USIA concerning this RFP should refer to the NIS College and University Partnerships Program and reference number E/ASU–98–07.

Deadline for Proposals

All copies must be received at the U.S. Information Agency by 5 p.m. Washington, D.C. time on Monday, February 23, 1998. Faxed documents will not be accepted at any time. Documents postmarked by the due date but received at a later date will not be accepted.

Approximate program dates: Grants should begin on or about June 30, 1998.

Duration: June 30, 1998–May 31, 2001.

FOR FURTHER INFORMATION CONTACT: Office of Academic Programs; Advising Teaching, and Specialized Programs Division; Specialized Programs Unit, (E/ASU) room 349, U.S. Information Agency, 301 4th Street, S.W., Washington, D.C. 20547, telephone: (202) 619–4126, fax: (202) 401–1433, internet: jcebra@usia.gov to request a Solicitation Package containing more detailed award criteria; all application forms; and guidelines for preparing proposals, including specific criteria for preparation of the proposal budget.

To Download a Solicitation Package via Internet: The entire Solicitation Package may be downloaded from USIA's website at http://www.usia.gov/education/rfps. Please read all information before downloading.

To Receive a Solicitation Package via Fax on Demand: The entire Solicitation Package may be received via the Bureau's ''Grants Information Fax on Demand System'', which is accessed by calling 202/401–7616. Please request a ''Catalog'' of available documents and order numbers when first entering the system.

Please specify USIA Program Officer Jonathan Cebra on all inquiries and correspondences. Interested applicants should read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFP deadline has passed, Agency staff may not discuss this completion in any way with applicants until the Bureau proposal review process has been completed.

Submissions

Applicants must follow all instructions given in the Solicitation Package. The original and 10 copies of the application should be sent to: U.S. Information Agency, Ref.: E/ASU–98–07, Office of Grants Management, E/XE, Room 326, 301 4th Street, S.W., Washington, D.C. 20547.

Applicants must also submit the ''Executive Summary'' and ''Proposal Narrative'' sections of the proposal on a 3.5'' diskette, formatted for DOS. This material must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. USIA will transmit these files electronically to USIS posts overseas for their review, with the goal of reducing the time it takes to get posts' comments for the Agency's grants review process.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the ''Support for Diversity'' section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy'', USIA ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Proposals should account for advancement of this goal in their program contents, to the full extent deemed feasible.

SUPPLEMENTARY INFORMATION:

Guidelines

The NIS College and University Partnership Program is limited to the following specific academic disciplines:

(1) Law;

(2) Business/economic/trade;

(3) Education/continuing education/civic education/educational reform;

(4) Government/public policy/public administration/urban and regional economic development; and

(5) Journalism/communications.

Proposals must focus on curriculum, faculty, and staff development in one or more of these eligible disciplines. Administrative reform at the foreign partner should also be a project component. Proposals in the field of economic development should focus on utilizing university resources to conduct educational outreach which will promote trade and investment in the region.

Projects should involve the development of new academic programs or the building and/or restructuring of an existing program or programs, and should promote higher education's role in the transition to market economies and open democratic systems. Feasibility studies to plan partnerships will not be considered.

Whenever feasible, participants should make their training and personnel resources, as well as results of their collaborative research, available to government, NGOs, and business.

Participating institutions should exchange faculty and/or staff members for teaching/lecturing and consulting. At least once, one U.S. participant should be in residence at the foreign partner institution for one semester to serve in a coordinating role.

U.S. institutions are responsible for the submission of proposals and should collaborate with their foreign partners in planning and preparing proposals. U.S. and foreign partner institutions are encouraged to consult about the proposed project with USIA E/ASU staff in Washington, D.C. Preference will be given to proposals which demonstrate evidence of previous relations with the foreign partner institution(s).

Guidelines

U.S. Partner and Participant Eligibility

In the U.S., participation in the program is open to accredited two- and four-year colleges and universities, including graduate schools. Applications from consortia of U.S. colleges and universities are eligible. Secondary U.S. partners may include relevant non-governmental organizations, non-profit service or professional organizations. The lead U.S. institution in the consortium is responsible for submitting the application and each application from a consortium must document the lead school's stated authority to represent the consortium. Participants representing the U.S. institution who are traveling under USIA grant funds must be faculty, staff, or advanced graduate students from the participating institution(s) and must be U.S. citizens.

Foreign Partner and Participating Eligibility

Overseas, participation is open to recognized, degree-granting institutions of post-secondary education, which may include internationally recognized and established independent research institutes. Secondary foreign partners may include relevant governmental and non-governmental organizations, non-profit service or professional organizations. Participants representing the foreign institutions must be faculty, staff or advanced students of the partner institution, and be citizens, nationals, or permanent residents of the country of the foreign partner, and be qualified to hold a valid passport and U.S. J–1 visa.

Foreign partners from the following countries are eligible:

Armenia.

Azerbaijan—foreign partners must be independent institutions; state universities are not eligible.

Belarus—foreign partners must be independent institutions; state universities are not eligible.

Georgia.

Kazakstan.

Kyrgyzstan.

Moldova.

Russia—preference will be given to proposals which: (1) designate partner institutions outside of Moscow and St. Petersburg; (2) designate partner institutions in regions which have been identified by the U.S.-Russian Joint Commission on Economic and Technical Cooperation for Regional Investment Initiatives. Khabarovsk kraj and Sakhalin oblast have been designated for a Regional Investment Initiative. Samara oblast has also been designated for a Regional Investment Initiative.

Tajikistan.

Turkmenistan.

Ukraine.

Uzbekistan.

Partnerships including a secondary foreign partner from a non-NIS country in Europe are eligible; however, with the exception noted below, USIA will not cover overseas non-NIS partner institution costs.

In order to promote regional cooperation, limited funds may be budgeted for the exchange, as part of this partnership agreement, of faculty between NIS institutions and institutions of higher learning in Central and Eastern Europe (Albania, Bosnia, Bulgaria, Croatia, Czech Republic, Estonia, Hungary, Latvia, Lithuania, the Former Yugoslav Republic of Macedonia, Moldova, Poland, Romnai, Serbia and Montenegro, Slovakia, Slovenia).

Ineligibility

A proposal will be deemed technically ineligible if:

(1) It does not fully adhere to the guidelines established herein and in the Solicitation Package;

(2) It is not received by the deadline;

(3) It is not submitted by the U.S. partner;

(4) One of the partner institutions is ineligible;

(5) The academic discipline(s) is/are not listed as eligible in the RFP, herein;

(6) The amount requested of USIA exceeds $300,000 for the three-year project.

Please refer to program-specific guidelines (POGI) in the Solicitation Package for further details.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The Agency reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal USIA procedures.

Dated: November 14, 1997.

John P. Loiello,

Associate Director for Educational and Cultural Affairs.

[FR Doc. 97–30525 Filed 11–19–97; 8:45 am]

BILLING CODE 8230–01–M

Corrections

Federal Register

Vol. 62, No. 224

Thursday, November 20, 1997

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39232; File No. SR–DTC–97–18]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding the Participant Exchange Service

Correction

In notice document 97–27758 beginning on page 54666 in the issue of Tuesday, October 21, 1997, the docket line is corrected to read as set forth above.

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. RSPA-97-2968 (PDA-17(R))]

Application by William E. Comley, Inc. and TWC Transportation Corporation for a Preemption Determination as to Public Utilities Commission of Ohio Requirements for Cargo Tanks

Correction

In notice document 97–26918 beginning on page 53049, in the issue of Friday, October 10, 1997, make the following correction:

On page 53049, in the third column, in the **DATES** section, in the fourth line, ''December 9, 1997'' should read ''January 8, 1998''.

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Quarterly Publication of Individuals, Who Have Chosen To Expatriate, as Required by Section 6039(f)

Correction

In notice document 97–29085, beginning on page 59758, in the issue of Tuesday, November 4, 1997, make the following correction:

On page 59762, in the first column, in the FR Doc. line, ''10-31-97'' should read ''11-3-97''.

BILLING CODE 1505-01-D

Federal Register

Thursday
November 20, 1997

Part II

Department of Health and Human Services

Administration for Children and Families

45 CFR Part 270, et al.

Temporary Assistance for Needy Families Program (TANF); Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Parts 270, 271, 272, 273, 274, 275

RIN 0970–AB64, 0970–AB76, and 0970–AB77

Temporary Assistance for Needy Families Program (TANF)

AGENCY: Administration for Children and Families, HHS.

ACTION: Proposed rule.

SUMMARY: The Administration for Children and Families (ACF) proposes to issue regulations governing key provisions of the new welfare block grant program enacted in 1996—the Temporary Assistance for Needy Families, or TANF, program. It replaces the national welfare program known as Aid to Families with Dependent Children (AFDC) and the related programs known as the Job Opportunities and Basic Skills Training Program (JOBS) and the Emergency Assistance (EA) program.

The proposed rules reflect new Federal, State, and Tribal relationships in the administration of welfare programs; a new focus on moving recipients into work; and a new emphasis on program information, measurement, and performance. The proposed rules also reflect the Administration's commitment to regulatory reform.

DATES: You must submit comments by February 18, 1998.

ADDRESSES: You may mail or hand-deliver comments to the Administration for Children and Families, Office of Family Assistance, 5th Floor East, 370 L'Enfant Promenade, SW, Washington, DC 20447. You may also transmit written comments electronically via the Internet. To transmit comments electronically, or download an electronic version of the proposed rule, you should access the ACF Welfare Reform Home Page at http://www.acf.dhhs.gov/news/welfare/ and follow any instructions provided.

We will make all comments available for public inspection on the 5th Floor East, 901 D Street, SW, Washington, DC 20447, from Monday through Friday between the hours of 9 a.m. and 4 p.m. For additional information, see Supplementary Information section of the preamble.

FOR FURTHER INFORMATION CONTACT: Mack Storrs, Director, Division of Self-Sufficiency Programs, Office of Family Assistance, ACF, at 202–401–9289, or Robert Shelbourne, Chief, Program Development Branch, at 202–401–5150.

Deaf and hearing-impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 between 8 a.m. and 7 p.m. Eastern time.

SUPPLEMENTARY INFORMATION:

Comment Procedures

We will not consider comments received beyond the 90-day comment period in developing the final rule. Because of the large number of comments we anticipate, we will only accept written comments. In addition, all your comments should:

- Be specific;
- Address only issues raised by the proposed rule, not the law itself;
- Where appropriate, propose alternatives;
- Explain reasons for any objections or recommended changes; and
- Reference the specific section of the proposed rule that you are addressing.

We will not acknowledge the comments we receive. However, we will review and consider all that are germane and received during the comment period.

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I. The Personal Responsibility and Work Opportunity Reconciliation Act

On August 22, 1996, President Clinton signed ''The Personal Responsibility and Work Opportunity Reconciliation Act of 1996''—or PRWORA—into law. The first title of this new law (Pub. L. 104–193) establishes a comprehensive welfare reform program designed to change the nation's welfare system dramatically. The new program is called Temporary Assistance for Needy Families, or TANF, in recognition of its focus on moving recipients into work and time-limiting assistance. Other key features of TANF include its provisions to reward States for high performance and to encourage continued State expenditures on assistance to needy families.

PRWORA repeals the existing welfare program known as Aid to Families with Dependent Children (AFDC), which provided cash assistance to needy families on an entitlement basis. It also repeals the related programs known as the Job Opportunities and Basic Skills Training program (JOBS) and Emergency Assistance (EA).

The new TANF program went into effect on July 1, 1997, except in States that elected to submit a complete plan and implement the program at an earlier date.

The new law reflects widespread, bipartisan agreement on a number of key principles:

- Welfare reform should help move people from welfare to work.
- Welfare should be a short-term, transitional experience, not a way of life.
- Parents should receive the child care and the health care they need to protect their children as they move from welfare to work.
- Child support programs should become tougher and more effective in securing support from absent parents.
- Because many factors contribute to poverty and dependency, solutions to these problems should not be ''one size fits all.'' The system should allow States, Indian tribes, and localities to develop diverse and creative responses to their own problems.
- The Federal government should focus less attention on payment accuracy and program procedures and place more emphasis on program results.

This landmark welfare reform legislation dramatically affects not only needy families, but also intergovernmental relationships. It challenges Federal, State, Tribal and local governments to foster positive changes in the culture of the welfare system and to take more responsibility for program results and outcomes. It transforms the way agencies do business, requiring that they engage in genuine partnerships with each other,

with businesses, community organizations and needy families.

The new law provides an unparalleled opportunity to achieve true welfare reform. It also presents very significant challenges for families and State and Tribal entities in light of the changing program structure, loss of Federal entitlements, creation of time-limited assistance, and new penalty and bonus provisions.

Most of the resources in the AFDC program went to support mothers raising their children alone. In the early years, the expectation was that these mothers would stay home and care for their children; in fact, in a number of ways, program rules discouraged work. Over time, as social and economic conditions changed, and more women entered the work force, the expectations changed. In 1988, Congress enacted the new JOBS program to provide education, training and employment that would help needy families avoid long-term welfare dependence. By 1994, 20 percent of the non-exempt adult AFDC recipients nationwide were participating in the JOBS program.

In spite of these changes, national sentiment supported more drastic change. Policy-makers, agency officials and the public expressed frustration about the slow progress being made in moving welfare recipients into work and the continuing decline in family stability. States were clamoring for more flexibility to reform their programs.

While the Clinton Administration had supported individual reform efforts in almost every State, approving 80 waivers in its first five years, the waiver process was not an ideal way to achieve systemic change. It required separate Federal approval of each individual reform plan, limited the types of reforms that could be implemented, and enabled reforms to take place only one State at a time. Governors joined Congress and the President in declaring that the welfare system was ''broken.''

After more than two years of discussion and negotiation, PRWORA emerged as a bipartisan vehicle for comprehensive welfare reform. On July 31, 1996, President Clinton issued a statement indicating that the pending bill had the potential ''to transform a broken system that traps too many people in a cycle of dependence to one that emphasizes work and independence, to give people on welfare a chance to draw a paycheck, not a welfare check. It gives us a better chance to give those on welfare what we want for all families in America, the opportunity to succeed at home and at work.''

The law that was enacted three weeks later gives States, and federally recognized Indian tribes, the authority to use Federal welfare funds ''in any manner that is reasonably calculated to accomplish the purpose'' of the new program.

It provides them broad flexibility to set eligibility rules and decide what benefits are most appropriate. It also enables States to implement their new programs without getting the ''approval'' of the Federal government. In short, it offers States and Tribes an opportunity to try new, far-reaching changes that can respond more effectively to the needs of families within their own unique environments.

PRWORA redefines the Federal role in administration of the nation's welfare system. It limits Federal regulatory and approval authority, but gives the Federal government new responsibilities for tracking State performance. In a select number of areas, it calls for penalties when States fail to comply with program requirements, and it provides bonuses for States that perform well in meeting new program goals.

Under the new statute, program funding and assistance for families both come with new expectations and responsibilities. Adults receiving assistance are expected to engage in work activities and develop the capability to support themselves before their time-limited assistance runs out. States and Tribes are expected to assist recipients making the transition to employment. They are also expected to meet work participation rates and other critical program requirements in order to maintain their Federal funding and avoid penalties.

Some important indicators of the change in expectations are: time limits; higher participation rates; the elimination of numerous exemptions from participation requirements that existed under prior law; and the addition of a statutory option for States to require individual responsibility plans. Taken together, these provisions signal an expectation that we must broaden participation beyond the ''job-ready.''

In meeting these expectations, States need to examine their caseloads, identify the causes of long-term underemployment and dependency, and work with families, communities, businesses, and other social service agencies in resolving employment barriers. In some cases, States may need to provide intervention services for families in crisis or may need to adapt program models to accommodate individuals with disabilities or other special needs. TANF gives States the flexibility they need to respond to such individual family needs, but, in return, it expects States to move towards a strategy that provides appropriate services for all needy families.

II. Regulatory Framework

A. Consultations

In the spirit of both regulatory reform and PRWORA, we implemented a broad and far-reaching consultation strategy prior to the drafting of this Notice of Proposed Rulemaking (NPRM). In Washington, we set up numerous meetings with outside parties to gain information on the major issues underlying the work, penalty, and data collection provisions of the new law. In our ten regional offices, we used a variety of mechanisms—including meetings, conference calls, and written solicitations—to garner views from ''beyond the Beltway.''

The purpose of these discussions was to gain a variety of informational perspectives about the potential benefits and pitfalls of alternative regulatory approaches. We spoke with a number of different audiences, including: representatives of State, Tribal and local governments; nonprofit and community organizations; business and labor groups; and experts from the academic, foundation, and advocacy communities. We solicited both written and oral comments, and we worked to ensure that information and concerns raised during this process were shared with both the staff working on individual regulatory issues and key policy-makers.

These consultations were very useful in helping us identify key issues and evaluate policy options. However, we would like to emphasize that we are publishing these regulations as a proposed rule. Thus, all interested parties have the opportunity to voice their concerns and react to specific policy proposals. We will review comments we receive during the comment period and take them into consideration before issuing a final rule.

B. Related Regulations Under Development

This NPRM addresses the work, accountability, and data collection and reporting provisions of the new TANF program. Over the next several months, we expect to issue a number of other related proposed rules, covering: child poverty rates; high performance bonuses; illegitimacy reduction bonuses; and Tribal TANF and work programs.

We will also be issuing a number of NPRMs on the child support

enforcement provisions found in title III of PRWORA.

This NPRM does not include the provisions for the new Welfare-to-Work (WTW) provisions at section 403(a)(5) of the Act, as created by section 5001(a)(1) of Pub. L. 105–33. The Secretary of Labor is responsible for issuing regulations on these provisions and the provisions at section 5001(c), regarding WTW grants for Tribes. Information about this program is available on the Web at http://wtw.doleta.gov.

This NPRM does include the conforming amendment to the definition of ''qualified State expenditures'' required by section 5001(a)(2) of Pub. L. 105–33, as well as the amendments to the TANF provisions at sections 5001(d), 5001(g)(1), and 5001(h). Section 5001(d) addresses treatment of assistance under WTW under the TANF time limits. Section 5001(g)(1) provides a new penalty that takes away WTW funds when a State fails to meet the TANF MOE requirements. Section 5001(h) addresses the relationship between an individual penalty and work requirements.

This NPRM does not include the provision at section 5001(g)(2), which requires repayment of WTW funds to the Secretary of Labor following a finding by the Secretary of Labor of misuse of funds. Since the Department of Labor is responsible for administering this penalty and receives any repaid funds, it would not be appropriate for us to issue rules on this provision.

Under section 5001(e) of Pub. L. 105–33, we have responsibility for regulating the WTW data reporting requirements, under section 411(a) of the Act, as amended.

We will issue a rulemaking that addresses these requirements at a later date, following consultation with the Department of Labor, State agencies, Private Industry Councils, and other affected parties.

We encourage States and others who are interested in these areas to review and comment on these proposed rules when they are published in the **Federal Register**.

You should be aware of the important relationships between this regulatory package and the other packages that will be following. In particular, we would like to point out that section 412 of the Social Security Act (as amended by PRWORA) provides that federally recognized Tribes may elect to operate their own TANF programs, and Tribes that operated their own JOBS programs may continue to receive those funds to operate Tribal work programs.

The choice Tribes make on TANF will depend on a number of factors, including the nature of services and benefits available under the State program. Thus, Tribes have a direct interest in the regulations governing State programs.

Tribes also have an interest in these regulations because some of the rules we develop for State programs could eventually apply to the Tribal programs. In particular, we urge Tribes to note the data collection and reporting requirements at part 275. While the statute allows Tribes to negotiate certain program requirements, it subjects Tribal programs to the same data collection and reporting requirements as States.

We would also like to direct the Tribes to the maintenance-of-effort (MOE) policies discussed at § 273.1. In that section, we propose that State contributions to a Tribal program could count toward a State's MOE. Tribes should be aware that this proposal could have important implications for the funding of Tribal programs and State-Tribal relations.

In order for welfare reform to succeed in Indian country, it is important for State and Tribal governments to work together on a number of key issues, including data exchange and coordination of services. We remind States that Tribes have a right under law to operate their own programs. States should cooperate in providing the information necessary for Tribes to implement their own programs.

Likewise, Tribes should cooperate with States in identifying Tribal members and tracking receipt of assistance.

We are also issuing separate final rules to make conforming changes to our existing rules in chapter II of title 45.

In the first, we will be repealing the obsolete regulations for the EA, JOBS, and the IV–A child care programs, and some rules covering administrative requirements of the AFDC programs. This rulemaking will be a final rule, effective upon publication. We expect to eliminate about 82 pages from the Code of Federal Regulations.

Later on, we will be issuing a final rule that deletes or replaces obsolete AFDC and title IV–A references throughout chapter II. This second rulemaking will take additional time because the AFDC provisions are intertwined with provisions for other programs that are not repealed. Also, it is not clear that we should repeal all the AFDC provisions because Medicaid, foster care and other programs depend on the AFDC rules in effect under prior law. Because of these complexities and the non-urgent nature of the conforming changes, the second rule is on a slower schedule.

PRWORA also makes changes to other major programs administered by ACF, the Department, and other Federal agencies that may significantly affect a State's success in implementing welfare reform. For example, title VI of PRWORA repeals the child care programs that were previously authorized under title IV–A of the Social Security Act (the Act). In their place, it provides two new sources of child care funding for the Lead Agency that administers the Child Care and Development Block Grant program. A major purpose of the increases in child care funding provided under PRWORA is to assist low-income families in their efforts to be self-sufficient. We issued proposed rules covering this new funding and amendments to the Child Care and Development Block Grant program on July 23, 1997. Comments were due within 60 days of that date.

We encourage you to look in the **Federal Register** for rulemaking actions on related programs and to take the opportunity to comment.

C. Statutory Context

These proposed rules reflect PRWORA, as enacted, and amended by Pub. L. 104–327 and Pub. L. 105–33.

The changes made by Pub. L. 104–237 are fairly limited in scope; we discuss them in the preamble on contingency fund MOE requirements at §§ 274.71, 274.72, and 274.77.

Pub. L. 105–33 created the new Welfare-to-Work (WTW) program, made a few substantive changes to the TANF program, and made numerous technical corrections to the TANF statute. Throughout the preamble discussion and the appendices, you will note references to the amendments made by this legislation. However, as we previously mentioned, this NPRM includes only a limited number of changes related to the new WTW provisions. The Department of Labor has primary responsibility for administering the program and issuing the WTW regulations. We have responsibility for issuing rules on the WTW data collection requirements, but will be doing that at a subsequent date.

D. Regulatory Reform

In its latest *Document Drafting Handbook*, the Office of the Federal Register supports the efforts of the National Performance Review and encourages Federal agencies to produce more reader-friendly regulations. In drafting this proposed rule, we have paid close attention to this guidance. Individuals who are familiar with our

existing welfare regulations should notice that this package incorporates a more readable style. This rulemaking effort gave us a unique opportunity to change our approach because we were starting from scratch rather than amending an existing rule.

In the spirit of facilitating understanding, we have included some preamble discussion and regulatory text to give you a broader context for other parts of the rulemaking document. Examples include the provisions in subparts A and G of part 271 (which address work provisions other than participation rates and penalties) and § 270.20 (which includes the statutory goals of the program). These sections are primarily explanatory or restatements of the statutory requirements. The language used and the surrounding discussion should indicate the nature of the provision.

In the same spirit, we have included draft data collection and reporting forms as appendices to the proposed rules even though we do not intend to publish the forms as part of the final rule. We thought that the inclusion of the draft forms would expand public access to this information and make it easier to comment on our data collection and reporting plans.

E. Scope of This Rulemaking

Our initial regulatory plan for TANF included three separate TANF regulations—one each on work, penalties, and data collection and reporting. However, we decided it would be better to incorporate these into a single regulatory package. While this decision resulted in a much larger document, it should facilitate your understanding of the entire regulatory framework of the TANF program, as well as your review and comment.

F. Applicability of the Rules

As we indicated in previous policy guidance to the States, a State may operate its program under a reasonable interpretation of the statute prior to our issuance of final rules. Thus, in determining whether a State is subject to a penalty, we will not apply regulatory interpretations retroactively. You can find a statement of this policy at § 270.40(b) of the proposed rules.

III. Principles Governing Regulatory Development

A. Regulatory Restraint

Under the new section 417 of the Act, the Federal government may not regulate State conduct or enforce any TANF provision except to the extent expressly provided by law. This limitation on Federal authority is consistent with the philosophy of State flexibility and the general State and Congressional interest in shifting more responsibility for program policy and procedures to the States.

We are interpreting this provision to allow us to regulate in two different kinds of situations: (1) where Congress has explicitly directed the Secretary to regulate (for example, under the caseload reduction provisions, described below); and (2) where Congress has charged HHS with enforcing penalties, even if there is no explicit mention of regulation. In this latter case, we believe we have an obligation to States to set out, in regulations, the criteria we will use in carrying out our express authority to enforce certain TANF provisions by assessing penalties.

Throughout the proposed rule, we have endeavored to regulate in a manner that does not impinge on a State's ability to design an effective and responsive program.

You will also note that this rulemaking does not cover the non-discrimination provisions at section 408(c). This subsection specifies that any program or activity receiving TANF funds is subject to the: (1) Age Discrimination Act of 1975; (2) section 504 of the Rehabilitation Act of 1973; (3) the Americans with Disabilities Act of 1990; and (4) title VI of the Civil Rights Act of 1964. Since ACF is not responsible for administering these provisions of law, and they are not TANF provisions, this rulemaking does not include them.

Individuals with questions about the requirements of the non-discrimination laws, or concerns about compliance of individual TANF programs with them, should address their comments or concerns to the Director, Office of Civil Rights, Department of Health and Human Services, 200 Independence Ave, SW, Room 522A, Washington, DC 20201.

B. State Flexibility

In the Conference Report to PRWORA, Congress stated that the best welfare solutions come from those closest to the problems, not from the Federal government. Thus, the legislation creates a broad block grant to each State to reform welfare in ways that work best. It gives States the flexibility to design their own programs, define who will be eligible, establish what benefits and services will be available, and develop their own strategies for achieving program goals, including how to help recipients move into the work force.

Under the law and under these proposed rules, States may implement innovative and creative strategies for supporting the critical goals of work and responsibility. For example, they may choose to expend funds on earned income tax credits or transportation assistance that would help low-wage workers keep their jobs. They could also extend employment services to non-custodial parents, by including them within the definition of ''eligible families.''

To ensure that our rules support the legislative goals of PRWORA, we are committed to gathering information on how States are responding to the new opportunities available to them. We reserve the right to revisit some issues, either through legislative or regulatory proposals, if we identify situations where State actions are not furthering the objectives of the Act.

C. Accountability for Meeting Program Requirements and Goals

The new law gives States enormous flexibility to design their TANF programs in ways that strengthen families and promote work, responsibility, and self-sufficiency. At the same time, however, it reflects a bipartisan commitment to ensuring that State programs support the goals of welfare reform. To this end, the statutory provisions on data collection, bonuses, and penalties are crucial because they allow us to track what is happening to needy families and children under the new law, measure program outcomes, and promote key program objectives.

Work

We believe the central goal of the new law is to move welfare recipients into work. The law reflects this important goal in a number of ways:

- Work receives prominent mention in the statutory goals at section 401 and the plan provisions in section 402;
- Section 407 establishes specific work participation rates each State must achieve;
- Section 409 provides significant financial penalties against any State that fails to achieve the required participation rates;
- Section 411 provides specific authority for the Secretary to establish data reporting requirements to capture necessary data on work participation rates; and
- Section 413 calls for ranking of States based on the effectiveness of their work programs.

These proposed rules reflect a similar, special focus on promoting the work objectives of the Act. We are proposing

specific rules under sections 407, 409, and 411 designed to ensure that States meet the statutory requirements. You should look at the proposed rules in part 271, and the related preamble discussion, for specific details.

This Administration has already shown its commitment to promoting the work objectives of this new law in several ways. Before the legislation was passed, we worked very hard to ensure that Congress passed strong work provisions and provided adequate child care funding and other program supports.

Since enactment, the President has announced a number of additional welfare-to-work initiatives designed to promote work. These include implementation of a new ''Work Opportunity Tax Credit'' that provides incentives for employers to hire welfare recipients and proposals to:

- Extend and expand this credit;
- Increase investments in distressed communities; and
- Provide $3 billion in additional funding to help communities move hard-to-serve recipients into jobs.

As part of budget reconciliation, Congress increased the Work Opportunity Tax Credit, available to employers who hire long-term welfare recipients, and funded a new Welfare-to-Work (WTW) program. States, localities, and Indian Tribes will receive the additional $3 billion in WTW funds in FYs 1998 and 1999.

The President has also challenged America's businesses, its large non-profit sector and the executive branch of the Federal government to make job opportunities available to welfare recipients. On March 8, 1997, he directed all Federal agencies to submit plans describing the efforts they would make to respond to this challenge. In response to this directive, Federal agencies identified more than 10,000 jobs that would be available for welfare recipients over the next four years. (You can find additional information on this initiative on the Web at http://w2w.fed.gov.)

Meeting the Needs of Low-Income Families and Children

In a number of different ways, the new law works to ensure that the needs of low-income children and families are met. First, it provides a guaranteed base level of Federal funding for the TANF programs. Then, in times of special financial need, it makes additional funding available through a $2 billion Contingency Fund and through a Federal loan fund. It also authorizes several studies to monitor changes in the situations of needy children and families that occur after enactment. For example, it requires us to report on how certain children are affected by the provisions of the new law, and to track State child poverty rates, and initiate corrective actions by States when such rates rise.

Domestic Violence

We wish to bring one particular provision—known as the Family Violence Option (FVO)—to your attention. This provision, at section 402(a)(7), gives States the option to waive certain program requirements for certain victims of domestic violence. It thus provides a valuable framework for identifying victims of domestic violence and developing appropriate service strategies for them.

This Administration is strongly committed to reducing domestic violence, and we encourage all States to consider adopting the Family Violence Option. In working with domestic violence cases, we also encourage States to pay special attention to the need for maintaining the confidentiality of case-record information and the victims' own assessments of their safety needs and their abilities to meet program requirements.

During our consultations, we heard numerous questions about the relationship between State policies on domestic violence and the determination of State work and time-limit penalties. Congress considered this issue in its budget resolution, but decided to study the issue further rather than to amend the statute during budget reconciliation. Our regulations seek to implement the statute in a way that is consistent with both the language of the statute and our national interest in fostering appropriate State responses to domestic violence.

The FVO provides States with a specific vehicle for addressing domestic violence among recipients of TANF assistance. The provision envisions that States would screen and identify victims of violence, conduct individual assessments, and develop temporary safety and service plans that would protect victims from any immediate dangers, stabilize their living situations, and explore avenues for overcoming dependency.

The family's individual circumstances or service plans may require that certain program requirements (e.g., regarding time limits and child support cooperation) be temporarily waived in cases where compliance with such requirements would make it difficult for individuals to escape domestic violence, unfairly penalize victims, or put individuals at further risk of domestic violence. In these cases, the FVO allows States to grant such waivers.

Under TANF, States must meet numerical standards for work participation and the percentage of families that may receive federally-funded assistance for more than five years. The statutory language on calculating work participation rates makes no reference to domestic violence cases or to a State's good cause waivers of work requirements under the Family Violence Option. Thus, we think that the clearest reading of this statutory provision includes victims of domestic violence in the calculation of the work participation rates.

The statutory language on time limits refers to victims of domestic violence, but not to the good cause waivers provided under the Family Violence Option. The statutory language suggests that victims of domestic violence would be included in the 20 percent limit on exceptions to the time limit.

However, there is legitimate concern among States and others that election of the FVO might put States at special risk of incurring financial penalties. In granting good cause waivers of program requirements under the FVO, they may make it more difficult for themselves to meet the numerical requirements on time limits and the work participation rates.

Our proposed rules attempt to remain true to the statutory provisions on work and time limits and to ensure that election of the FVO is an authentic choice for States. In deciding to address these waiver cases under ''reasonable cause'' rather than through direct changes in the penalty calculations, we are reflecting the statutory language and maintaining the focus on moving families to self-sufficiency. At the same time, we are giving States some protection from penalties when their failures to meet the standard rates are attributable to the granting of good cause domestic violence waivers that are based on individual assessments, are temporary, and include individualized service and safety plans. We hope our proposal will alleviate concern among States that attention to the needs of victims of domestic violence might place them at special risk of a financial penalty.

Our proposed rules recognize that, through the FVO, Congress gave unique status to victims of domestic violence under the TANF program. Likewise, under our proposed rules, this group of recipients receives special recognition under the ''reasonable cause'' provisions for the work and time-limit penalties.

At § 270.30, the proposed rules reflect our expectation that good cause waivers

will be bona fide waivers provided within the framework of the FVO. Under this framework: (1) State policies would provide for individualized responses and service strategies, consistent with the needs of individual victims; (2) waivers of program requirements would be temporary in nature (e.g., would not be granted for longer than six months); and (3) in lieu of program requirements, victims of domestic violence would be served in alternative ways, consistent with their individualized safety and service plans.

In specifying that good cause waivers should not exceed six months in length, we have attempted to balance two distinct objectives: (1) giving States the flexibility they need to respond appropriately to the individual circumstances of domestic violence victims; and (2) assuring that the work objectives of the Act are not undermined.

We do not intend that all good cause waivers should last six months. The length of the waiver should reflect the State's individualized determination of what length of time a client needs. We expect that the length of the waiver could be substantially shorter in some cases. Also, we expect that, in some cases, States might have to renew a waiver or issue a second waiver (i.e., because a victim of domestic violence suffered from continued abuse that required further protection and response).

We welcome comments on whether our proposed approach and language achieve the balance we are seeking.

We want to ensure that our rules work to foster, not undermine, the objectives of the Act. Our goal is to promote the provision of appropriate alternative services for victims of domestic violence that foster both safety and self-sufficiency.

To ensure that these policies have the desired effect, we limit the availability of ''reasonable cause'' to States that have adopted the FVO. In addition, in the definitions section of the proposed rule (at § 270.30), we specify criteria that will apply in deciding whether a good cause domestic violence waiver exists. Also, we reserve the right to audit States claiming ''reasonable cause'' to ensure that good cause domestic violence waivers that States include in their ''reasonable cause'' documentation meet the specified criteria.

In addition, we intend to monitor the number of good cause waivers granted by States and their effect on work and time limits. We want to ensure that States identify victims of domestic violence so that they may be appropriately served, rather than exempted and denied services that lead to independence. We also want to ensure that the provision of good cause waivers does not affect a State's overall effort in moving families towards self-sufficiency. Thus, we will be looking at information on program expenditures and participation levels to see if States granting good cause domestic violence waivers are making commitments to assist all families in moving toward work.

If we find that good cause waivers are not having the desired effects, we may propose regulatory or legislative remedies to address the problems we identify.

For additional discussion of our proposals, see §§ 270.30, 271.52 and 274.3 of the preamble and proposed rule.

Use of Funds

The new law imposes several restrictions on the use of both Federal and State funds to help ensure that program expenditures serve program goals. More specifically, the statute: (1) places a cap on the percentage of funds spent on administrative costs; (2) authorizes audits and penalties to protect against the misuse of funds; (3) establishes a number of limitations on the use of Federal funds; and (4) defines the conditions under which expenditures of State funds may count for MOE purposes. In general, States must expend both their Federal funds and their own State monies on activities that are consistent with the purposes of the TANF program. (For additional information on allowable uses of Federal TANF and State MOE funds, see ACF's guidance, TANF–ACF–PA–97–1, dated January 31, 1997, and the preamble discussion for part 273.)

Maintenance-of-Effort (MOE)

One of the most important provisions in the new law designed to protect needy families and children is the TANF maintenance-of-effort (MOE) requirement. This provision requires States to maintain a certain level of spending on welfare, based on historic (i.e., fiscal year (FY) 1994) expenditure levels. Because this provision is critical to the successful implementation of the law, Congress gave us the authority to enforce State compliance in meeting this requirement, and it receives significant attention in this proposed rule.

Under the data collection, work, and penalty provisions of the proposed rule, at parts 271–275, we took care to propose rules that: (1) ensure that States continue to make the required investments in meeting the needs of low-income children and families; (2) prevent States from either supplanting State funds with Federal funds or using their MOE funds to meet extraneous program or fiscal needs; (3) give us adequate information to meet our statutory responsibility to determine what is happening in State programs; and (4) take a broad view of work effort, caseload reduction, and program performance.

We recognize that States have more flexibility in spending State MOE funds than Federal funds, especially when they expend their MOE funds in separate State programs. However, the proposed rules also recognize and try to protect against actions that might undermine important goals of welfare reform. This is the same concern that we voiced in policy guidance we issued on MOE in January (TANF–ACF–PA–97–1). In particular, we noted that States could design their programs so as to avoid the work requirements of the new law or to avoid returning a share of their child support collections to the Federal government.

To mitigate these potential negative consequences, we indicated our intent to both take administrative actions and seek legislative remedies. As part of our commitment to taking administrative action, we are proposing to require States, under certain circumstances, to report information about the families served by States under separate State programs. Only through this additional reporting will we be able to determine the full nature and scope of State efforts to move needy families into work and the actual caseload reductions States are achieving. (See the preamble discussion and regulation under part 272, subpart D, and part 275.)

In TANF–ACF–PA–97–1, we indicated that States not making a good-faith effort on work in their separate State programs would not be eligible for a reasonable cause exception from the penalty for failing to achieve their work rate. The proposed rule incorporates and expands that proposal.

More specifically, it indicates that States would not be eligible for a reasonable cause exception from the time-limit penalty or any of the three work-related penalties if we detect a significant pattern of diversion of families to separate State programs that has the effect of undermining the work participation requirements of the Act. In general, diverting States would not be eligible for reductions in the work penalty amounts. Finally, they would be ineligible for a penalty reduction under corrective compliance if they did not correct the diversion and meet the other

conditions for reduction specified in these proposed rules.

In the January guidance we expressed similar concerns about the effect of separate State programs on the Federal share of child support collections. Therefore, our proposal in this area is similar to our proposal to prevent undermining of the work participation provisions. More specifically, we would deny States reasonable cause for the time-limit, work participation, child support cooperation, and work sanction penalties if we detect a significant pattern of diversion of families into separate State programs that results in the diversion of the Federal share of child support collections to State coffers. States undertaking such diversions would also be ineligible for reductions in the amounts of any of these four penalties under corrective compliance unless they also corrected the diversion during the corrective compliance process.

In making these proposals, we note that the Secretary has considerable discretion in determining whether to reduce penalties or grant a good cause exception.

Getting recipients to work is the most critical component to achieving the purposes of TANF—making welfare a program of temporary assistance for families moving to self-sufficiency. The Secretary has determined that, to prevent circumvention of this purpose, it is appropriate to limit the availability of the reasonable cause exception and penalty reduction if a State attempts to avoid the work participation requirements. Congress has reinforced the importance of appropriate work for recipients in four of the established penalties in section 409 of the Act—work participation rates, continuing assistance when child care is not available, sanctioning families that fail to participate in work, and continuation of assistance beyond 60 months. To carry out the intent of Congress that work be a central part of the TANF program, if we detect that a State is avoiding the work requirements by diverting a significant number of families to separate State programs, we will not grant this State a reasonable cause exception from any of the four penalties most closely tied to the work requirements, either in the form of a reduction in its work penalty based on degree of non-compliance or as a reduction in any of the four penalties as the result of achieving substantial (but not full) compliance.

The other key component to achieving self-sufficiency is implementation of the child support enforcement provisions. The Federal government has a major role to play in such enforcement (particularly with regard to the operation of the New Hire Directory and the Federal Parent Locator Service). It also has a continuing interest in the effectiveness of these programs and, under TANF, maintains its commitment to the funding of needy families whose children have been deprived of parental support and care.

We are concerned that a State's diverting cases to separate State programs would not only have unintended, negative consequences for the Federal budget and the Federal government's ability to ensure an effective child support program; it would also diminish the State's accountability for ensuring that needy families take appropriate steps towards achieving self-sufficiency. The Secretary has determined that, in the interest of protecting the key goals of TANF, it is appropriate to exercise her discretion to set penalty amounts and forgive penalties in a manner that will ensure that States do not divert cases inappropriately. Thus, if we detect a significant pattern of diversion of families to separate State programs that has the effect of diverting the Federal share of child support collections, we will not grant a reasonable cause exception or reduced penalty through corrective compliance for the following four penalties: work participation, time limits, failure to cooperate with paternity establishment and child support enforcement requirements, or failure to impose work sanctions.

We plan to monitor States' actions to determine if they constitute a significant pattern of diversion. For example, if, based on an examination of statistical or other evidence, we came to the conclusion that a State was assigning people to a separate State program in order to divert the Federal share of child support collections, or in order to evade the work requirements, we would conclude that this is a significant pattern of diversion and would deny the State certain types of penalty relief.

A State would be permitted the opportunity to prove that this pattern was actually the result of State policies and objectives that were entirely unrelated to the goal of diversion, but we would make the final judgment as to what constitutes a significant pattern of diversion.

For the specific regulatory changes associated with these policies, see §§ 271.51, 272.5 (c) and (d), and 272.6(i)(2).

We will also propose to require States seeking to receive high performance bonuses to report on families served by separate State programs. We will address this issue more fully in the coming NPRM on high performance bonuses.

In the policy announcement, we advised States to think carefully about the risks to the long-term viability of their TANF programs if they rely too extensively on separate State MOE programs. In general, States cannot receive contingency funds unless their expenditures within the TANF program are at 100 percent of historic State expenditures. Thus, excessive State reliance on expenditures outside the TANF program to meet MOE requirements could make access to contingency funds difficult during economic downturns.

Child-Only Cases

Since the January guidance came out, we have also become concerned that States might be able to avoid the work participation rates and time limits by excluding adults (particularly parents) from their eligible cases. Given the flexibility available to States under the statute and regulations, it appears possible that States could protect themselves from the requirement and the associated penalty risk by converting regular welfare cases into child-only cases. Such conversions would seriously undermine these critical provisions of welfare reform.

To protect against these negative consequences, in the work and time-limit sections of this proposed rule, we would prohibit States from converting cases to child-only cases for the purpose of avoiding penalties and require annual reporting of any such exclusions (with explanations). We are also proposing to recalculate a State's work participation rates and time limit exemptions if we determine that a State has excluded cases from its calculations for the purpose of avoiding penalties in these areas. See §§ 271.22, 271.24, and 274.1 for the specific proposals.

IV. Discussion of Individual Regulatory Provisions

Following is a discussion of all the regulatory provisions we have included in this package. The discussion follows the order of the regulatory text, addressing each part and section in turn.

A. Part 270—General Temporary Assistance for Needy Families (TANF) Provisions

This part of the proposed rules helps set the framework for the rest of the proposed rule. For the convenience of the reader, it reiterates the goals stated in the new section 401. It also includes

a set of definitions that are common to the different parts of the proposed rule.

What does this part cover? (§ 270.10)

This section of the proposed rules indicates that part 270 includes provisions that are applicable across all the TANF regulations in this rulemaking.

What is the purpose of the TANF program? (§ 270.20)

This section of the proposed rules repeats the statutory goals of the TANF program. In brief, they include reducing dependency and out-of-wedlock pregnancies; developing employment opportunities and more effective work programs; and promoting family stability.

While we do not elaborate on the statutory language, we would like to point out that, in a number of ways, the new law speaks to the need to protect needy and vulnerable children. States should keep this implicit goal in mind as they implement their new programs.

What definitions apply under the TANF regulations? (§ 270.30)

This section of the proposed rule includes definitions of the terms used in parts 270 through 275. It does not include definitions that pertain only to individual provisions. You should look to the appropriate individual parts of the proposed rules for definitions that are provision-specific.

In drafting this section of the proposed rule, we defined only a limited number of terms used in the statute and regulations. We understood that excessive definition of terms could unduly and unintentionally limit State flexibility in designing programs that best serve their needs. For example, we did not define ''family'' or ''head-of-household.'' States are thus free to define what types of families would be eligible for TANF assistance. (However, we suggest that you look at the sections of this rule covering work participation rates (§§ 271.22 and 271.24), MOE requirements (subpart A of part 273), time limits (§ 274.1), and data collection definitions (§ 275.2); none of these sections creates a definition of family, but all address the definition of the term ''family'' in describing key requirements on States.)

We also decided not to define the individual work activities that count for the purpose of calculating a State's participation rates. You should look to the preamble discussion for § 273.13 and subpart C of part 271, respectively, for additional discussion of these decisions.

You will note that we use the term ''we'' throughout the regulatory text and preamble. The term ''we'' means the Secretary of the Department of Health and Human Services or any of the following individuals or agencies acting on her behalf: the Assistant Secretary for Children and Families, the Regional Administrators for Children and Families, the Department of Health and Human Services, and the Administration for Children and Families.

Likewise, you should note that we use the term ''Act'' to refer to the Social Security Act, as amended by the new welfare law. We use the term ''PRWORA'' when we refer to the new law itself. A section reference is a Social Security Act reference if we use neither term.

Some of the definitions in this section incorporate the statutory definitions in PRWORA. We included these definitions largely for the reader's convenience. These statutory definitions include: ''adult,'' ''minor child,'' ''eligible State,'' ''Indian, Indian Tribe and Tribal organization,'' ''State,'' and ''Territories.''

We also propose some clarifying definitions. These include explanations of commonly used acronyms (such as ACF, AFDC, EA, IEVS, JOBS, MOE, PRWORA and TANF, as well as the new WTW) and commonly used terms and phrases (such as the Act and the Secretary). While the meaning of many of these is generally understood, we included them to ensure a common understanding.

We are also proposing a number of definitions that have substantial policy significance, for clarification purposes. For example, the definitions distinguish among several types of expenditures. These distinctions are critical because the applicability of the TANF requirements vary depending on the source of funds for the expenditures. In particular, it is important to distinguish between expenditures from the Federal TANF grant and from the State funds expended to meet MOE requirements (either within the TANF program or in separate State programs).

Federal expenditures. This is short-hand for the State expenditure of Federal TANF funds.

Qualified State Expenditures. This term refers to expenditures that count for TANF MOE purposes (at section 409(a)(7)). By regulation, we are proposing that most of the requirements that apply for countable TANF MOE expenditures also apply for Contingency Fund MOE purposes.

TANF MOE. This term refers to the expenditure of State funds that a State must make in order to meet the MOE requirement at section 409(a)(7).

Contingency Fund MOE. This term refers to expenditures of State funds that a State must make in order to meet the Contingency Fund MOE requirements under sections 403(b) and 409(a)(10). States must meet this MOE level in order to retain contingency funds made available to them for the fiscal year. Note that this term is more limited in scope than the term ''TANF MOE.'' See discussion at subpart B of part 274 for additional details.

State MOE expenditures. This term refers to any expenditure of State funds that may count for TANF MOE or Contingency Fund purposes. It includes both State TANF expenditures and expenditures under separate State programs.

State TANF expenditures. This term encompasses the expenditure of State funds within the State's TANF program. It identifies the only expenditures that can be counted toward the Contingency Fund MOE, except for expenditures made under the Child Care and Development Fund. It includes both commingled and segregated State TANF expenditures.

Commingled State TANF expenditures. This term identifies the expenditure of State funds, within the TANF program, that are commingled with Federal funds. Such expenditures may count toward both the State's TANF MOE and Contingency Fund MOE. To the extent that expended State funds are commingled with Federal funds, they are subject to the Federal rules.

Segregated State TANF expenditures. This term identifies State funds expended within the TANF program that are not commingled with Federal funds. Such expenditures count for both TANF MOE and Contingency Fund MOE purposes. They are not subject to many of the TANF requirements that apply only to Federal funds (including time limits).

Separate State program. This term identifies programs operated outside of TANF in which the expenditure of State funds count toward TANF MOE, but generally does not count for Contingency Fund MOE. With one exception (for CCDF expenditures), expenditure of State funds must be made within the TANF program in order to count as MOE for Contingency Fund purposes.

The definitions also distinguish among different categories and amounts of TANF grant funds. These distinctions are important because they affect the size of grant adjustments and total funding available to the State. In some

cases, different spending rules apply to different categories of funds.

State Family Assistance Grant (or SFAG). This term refers to the annual allocation of Federal funds to a State under the formula at section 403(a)(1).

Adjusted State Family Assistance Grant, or ''Adjusted SFAG.'' This term refers to the grant awarded to a State through the formula and annual allocation at section 403(a)(1), minus any reductions due to the implementation of a Tribal TANF program to serve Indians residing in the State. You should note the distinction between this term and the ''SFAG,'' because of their significance in determining spending limitations and the amount of penalties that might be assessed against a State under parts 271–275.

TANF funds. This term includes not just amounts made available to a State through the SFAG, but also other amounts available under section 403, including bonuses, supplemental grants, and contingency funds.

Federal funds. This has the same meaning as ''TANF funds.'' In expending Federal funds, States are subject to more restrictions than they are in expending State MOE as discussed in this NPRM under subpart B of part 273.

You should also note the definition of ''assistance'' proposed in this section.

Assistance. The terms ''assistance'' and ''families receiving assistance'' are used in the PRWORA in many critical places, including: (1) in most of the prohibitions and requirements at section 408, which limit the provision of assistance; (2) in the numerator and denominator of the work participation rates in section 407(b); and (3) the data collection requirements of section 411(a). Largely through reference, the term also affects the scope of the penalty provisions in section 409. Thus, it is important that States have a definition of ''assistance.'' At the same time, because TANF replaces AFDC, EA and JOBS, and provides much greater flexibility than these programs, what constitutes assistance is less clear than it was in the past.

Because PRWORA is a block grant, and it incorporates three different programs, a State may provide some forms of support under TANF that would not commonly be considered public assistance. Some of this support might resemble the types of short-term, crisis-oriented support that was previously provided under the EA program. Other forms might be more directly related to the work objectives of the Act and not have a direct monetary value to the family. We are proposing to exclude some of these forms of support from the definition of assistance.

The general legislative history for this title indicates that Congress meant that this term encompass more than cash assistance; beyond that, it is not very informative (H.R. Rep. No. 725, 104 Cong., 2d Sess (1996)). Our consultations did not produce clear guidance in this area either. However, they did identify some areas where clarification would be helpful. Therefore, this proposed rule contains essentially the same definition as we suggested in our January policy announcement (TANF–ACF–PA–97–1), with some additional clarifications.

In our January proposal, we took the view that the definition of assistance should encompass most forms of support. However, we recognized two basic forms of support that would not be considered welfare and proposed to exclude them from the definition. In brief, the two exclusions were: (1) services that had no direct monetary value and did not involve direct or indirect income support; and (2) one-time, short-term assistance.

In the proposed rule, we are clarifying that child care, work subsidies, and allowances that cover living expenses for individuals in education or training are included within the definition of assistance. For this purpose, child care includes payments or vouchers for direct child care services, as well as the value of direct child care services provided under contract or a similar arrangement. It does not include child care services such as information and referral or counseling, or child care provided on a short-term, ad hoc basis. Work subsidies includes payments to employers to help cover the costs of employment or on-the-job training.

We are also proposing to define one-time, short-term assistance as assistance that is paid no more than once in any twelve-month period, is paid within a 30-day period, and covers needs that do not extend beyond a 90-day period. In response to the policy announcement, we received a number of questions about what the term ''one-time, short-term'' meant. Based on our experience with the EA program, we realized that a wide range of interpretations was possible, and we were concerned that States might try to define as ''short-term'' or ''one-time'' many situations where assistance was of a significant and ongoing nature. We hope our proposal will give States the flexibility to meet short-term and emergency needs (such as an automobile repair), without invoking too many administrative requirements and undermining the objectives of the Act. We welcome comments on whether the proposed policy achieves this end.

Under the policy announcement and proposed rule, we define the minimum types of services and benefits that must be included. Based on comments we received, we considered allowing States to include additional kinds of benefits and services, at their option. However, we were concerned that varying State definitions would create additional comparability problems with respect to data collection and penalty determinations. Also, we were concerned that an expanded definition might have undesirable program effects. For example, it could extend child support assignment to cases where it would not be appropriate.

If States expanded their definitions of assistance, they would have to apply that same definition under all provisions of the regulations. Thus, if something fell within the definition of assistance, the family receiving that type of benefit would be subject to data collection and reporting, child support assignment and cooperation requirements, work requirements, and Federal time limits. In response to the policy announcement, we have also received a number of questions about the treatment of TANF assistance under the child support enforcement program. The Office of Child Support Enforcement will be issuing guidance on the distribution of child collections under PRWORA; this guidance will explain the treatment of TANF assistance under the new distribution rules.

For those concerned about the inclusion of child care in the definition of assistance, we would point out the child care expenditures made under the CCDBG program are not subject to TANF requirements, and States have the authority to transfer up to 30 percent of their TANF grant to the CCDBG program.

We are proposing to collect data on how much of the program expenditures are being spent on different kinds of ''assistance'' and ''non-assistance.'' See the discussion of the TANF Financial Report at part 275 for additional details.

If the data show that large portions of the program resources are being spent on ''non-assistance,'' we would have concerns that the flexibility in our definition of ''assistance'' is undermining the goals of the legislation. We would then look more closely at the ''non-assistance'' being provided and try to assess whether work requirements, time limits, case-record data and child support assignment would be appropriate for those cases. If necessary, we would consider a change to the

definition of ''assistance'' or other remedies.

You should also note the definitions of ''waiver'' and ''inconsistency'' in this part.

Waiver and *Inconsistency*. Under the new section 415, States that received approval for welfare reform waivers under section 1115 before July 1, 1997, have the option to operate their cash assistance programs under some or all of these waivers. For States electing this option, provisions of the new law that are inconsistent with the waivers do not take effect until the expiration of the applicable waivers. States have raised numerous questions about how we will interpret this provision, particularly with regard to what is a waiver and an inconsistency.

Since a waiver extension might affect the application of certain of the penalty provisions within a State, we are defining both terms. Part of our responsibility in administering the penalty provisions is to provide notice concerning the rules we will utilize in applying the penalties.

The issue in defining waiver concerns the scope of the provision, specifically how much of the current or underlying law (i.e., the provisions of title IV–A as in effect on August 21, 1996) are properly considered to be part of the waiver. Three possible interpretations were suggested. The first is a very limited definition in which a waiver is only the specific change to the AFDC statute as articulated in the waiver list that was included in the terms and conditions for each demonstration project. The second possible interpretation is that a waiver includes all the underlying law; that, in effect, the AFDC statute, as modified by the waiver terms and conditions, would continue to apply in a State continuing a demonstration project. The third interpretation is that the waiver includes only some parts of the unwaived underlying law.

We believe the third option is the best. It seems most consistent with the Congressional intent to allow States to finish testing the welfare reform policies they had initiated through waivers by allowing sufficient flexibility to continue relevant aspects of those policies. It recognizes that, although some requirements may not have specifically been part of the waiver (as there was no need for a waiver under AFDC), the requirements are an integral part of the demonstration embodied in the waiver.

The first interpretation option is too narrow to allow continuation of many demonstration objectives; thus, it seems inconsistent with the Congressional intent. Similarly, to allow a State to continue the AFDC program in its entirety, even when a particular AFDC provision was not necessary to the demonstration, would seem to frustrate the intent of Congress in enacting TANF. Rather, we believe section 415 was intended to allow States to continue their reform policies, but not the AFDC program in its entirety.

The definition of ''waiver'' we are proposing allows a State the flexibility to include applicable provisions of prior law, but only if their inclusion were necessary to achieve the objective of the approved waiver.

At § 271.60, we provide an example of the application of the definitions of waiver and inconsistent to the work requirements and explain their implications. We also discuss the application of the definitions to control and experimental groups.

After extensive deliberations, we have also defined what makes the new law ''inconsistent'' with a waiver. We propose that a provision of TANF is inconsistent with a waiver only if the State must change its waiver policy in order to comply with the TANF requirement. A TANF provision is not inconsistent if it is possible for the TANF requirement and the waiver policy to operate concurrently.

For example, if the State has a time limit that runs for two years and then has extensions if the recipient is ''playing by the rules,'' that time limit can run in tandem with the Federal time limit until the five-year limit on Federal assistance is reached. At that point, the TANF restriction would be inconsistent with providing further assistance under the demonstration's extension. However, since there is an inconsistency at that point, section 415 would allow a State to continue such assistance until the demonstration ended.

We considered two alternative definitions of inconsistency. The first was that just having a waiver that differs in any respect from the TANF requirement creates an immediate inconsistency. For example, under this definition, the State time limit and the Federal time limit would run sequentially. However, this definition seems to create an artificial inconsistency where one does not exist in fact; thus, it seems contrary to the statute.

The second alternative was to find that a waiver was not inconsistent with the TANF provisions of the law if TANF restrictions related only to the expenditure of Federal funds and did not prohibit States from continuing their waiver policies with their own funds. However, application of this theory could lead to a finding of no inconsistency for all waiver provisions, including those in the major areas of work and time limits. It would thus render section 415 meaningless.

At § 274.1, we provide additional discussion regarding the implications of our definition of inconsistency.

You should also note the definitions of ''Family Violence Option,'' ''good cause domestic violence waiver,'' and ''victim of domestic violence.''

Family Violence Option, Good Cause Domestic Violence Waivers, and *Victims of Domestic Violence.* These definitions are relevant to State claims of ''reasonable cause'' for failing to meet the work participation rate and time-limit requirements of the Act. Under parts 271 and 274, a State's decision to implement the Family Violence Option and its provision of good cause waivers to victims of domestic violence under that provision create a special-case situation that may affect a State's eligibility for a reasonable cause exception from these two penalties.

Finally, we would like you to note that § 273.0(b) contains a definition of ''administrative costs.'' This definition is important because States are subject to 15 percent caps on the amount of Federal TANF and State MOE funds they may spend on administrative activities.

When are these provisions in effect? (§ 270.40)

This section of the proposed rules provides only the general time frames for the effective dates of the TANF provisions. Many of the penalty and funding provisions have delayed effective dates. For example, most penalties would not be assessed against States in the first year of the program, and reductions in grants due to penalties would not occur before FY 1998 because reductions take place in the year following the failure. You should look to the discussion on the individual regulatory sections for specific information on effective dates.

This section also makes the important point that we will not retroactively apply rules against States. With respect to any actions or behavior that occurs before we issue final rules, we will judge State actions and behavior only against a reasonable interpretation of the statute.

B. Part 271—Ensuring That Recipients Work

What does this part cover? (§ 271.1)

This section identifies the scope of part 271: the mandatory work requirements of TANF.

What definitions apply to this part? (§ 271.2)

This section cross-references the general definitions for the TANF regulations established under part 270.

Supart A—Individual Responsibility

During our extensive consultations, a number of groups and individuals asked how the requirements on individuals relate to the State participation requirements and penalties. To help clarify what the law expects of individuals as opposed to the requirements it places on States, we have decided to outline a recipient's statutory responsibilities as part of the proposed rules. In so doing, we only paraphrase the statute, without interpreting these provisions. Inclusion of these provisions in the regulation does not indicate our intent to enforce these statutory provisions, but our expectation is that States will meet these requirements. We have included the requirements in the regulation for informational and contextual reasons.

What work requirements must an individual meet? (§ 271.10)

PRWORA promotes self-sufficiency and independence by expanding work opportunities for welfare recipients while holding individuals to a higher standard of personal responsibility for the support of their children. The legislation expands the concept of mutual responsibility, introduced under the Family Support Act of 1988. It espouses the view that income assistance to families with able-bodied adults should be transitional and conditioned upon their efforts to become self-sufficient. As States and communities assume new responsibilities for helping adults get work and earn paychecks quickly, parents face new, tougher work requirements.

Readers should understand that the law imposes a requirement on each parent or caretaker to work (see section 402(a)(1)(A)(ii)). That requirement applies when the State determines the individual is ready to work, or after (s)he has received assistance for 24 months, whichever happens first. For this requirement, the State defines what work activities meet the requirement.

In addition, there is a requirement that each parent or caretaker participate in community service employment if s(he) has received assistance for two months and is not either engaged in work in accordance with section 407(c) or exempt from work requirements. The State must establish minimum hours of work and the tasks involved. A State may opt out of this provision if it chooses. A State may impose other work requirements on individuals, but there is no further Federal requirement to work.

These individual requirements are different from the work requirements described at section 407. Section 407 applies a requirement on each State to engage a certain percentage of its total caseload and a certain percentage of its two-parent caseload in specified work activities. For the State requirement, the law lists what activities meet the requirement. A State could chose to use this statutory list for the first requirement on individuals, but is not required to do so. Subpart B below explains more fully what the required work participation rates are for States and how they are calculated. Subpart C explains the work activities and when an individual is considered ''engaged in work'' for those rates.

Which recipients must have an assessment under TANF? (§ 271.11)

Each State must make an initial assessment of the skills, prior work experience and employability of each recipient who is at least 18 years old, or has not completed high school (or equivalent) and is not attending secondary school.

With respect to the timing of assessments, within 90 days of the effective date of the State's TANF program (or up to 180 days, at State option), the State may assess an individual who is already receiving benefits as of that date. For any other recipient, the State may make the assessment within 30 days of the date on which the individual is determined to be eligible for assistance, but may increase this period to as much as 90 days. For example, if a State begins operating its TANF program on July 1, 1997, it may assess all individuals in its existing caseload by September 30, 1997 (or, at State option, December 31, 1997). For any individual applying after July 1, 1997, the State may do an assessment within 30 days (or 90 days, at State option).

What is an individual responsibility plan? (§ 271.12)

A State may require individuals to adhere to the requirements of an individual responsibility plan. Developed in consultation with the individual on the basis of the initial assessment described above, the plan should set forth the obligations of both the individual and the State. It should include an employment goal for the individual and a plan to move him/her into private-sector employment as quickly as possible. The proposed regulation includes more detailed suggestions for the content of an individual responsibility plan.

May an individual be penalized for not following an individual responsibility plan? (§ 271.13)

If the individual does not have good cause, (s)he may be penalized for not following the individual responsibility plan that (s)he signed. The State has the flexibility to establish good cause criteria, as well as to determine what is an appropriate penalty to impose on the family. This penalty is in addition to any other penalties the individual may have incurred.

What is the penalty if an individual refuses to engage in work? (§ 271.14)

If an individual refuses to engage in work in accordance with section 407, the State must reduce the amount of assistance otherwise payable to the family pro rata (or more, at State option) for the period during the month in which the individual refused, subject to good cause and other exceptions determined by the State. The State also has the option to terminate the case.

Each State may establish its own criteria for determining when not to impose a penalty on an individual. States may also establish other rules governing penalties as needed.

Under the Family Violence Option, a State may waive work requirements in cases where compliance would make it difficult for an individual to escape domestic violence or would unfairly penalize individuals who are or have been victimized by such violence or individuals who are at risk of further domestic violence. The State must determine that the individual receiving the program waiver has good cause for failing to comply with the standard work requirements.

Can a family be penalized if a parent refuses to work because (s)he cannot find child care? (§ 271.15)

A State may not reduce or terminate assistance to a single custodial parent caring for a child under age six for refusing to engage in required work, if the parent demonstrates an inability (as determined by the State) to obtain needed child care. This exception applies to penalties the State imposes for refusal to engage in work in accordance with either section 407 or section 402(a)(1)(A)(ii) of the Act. The parent's demonstrated inability must be for one of the following reasons:

- Appropriate child care within a reasonable distance from the

individual's home or work site is unavailable;

- Informal child care by a relative or under other arrangements is unavailable or unsuitable; or
- Appropriate and affordable formal child care arrangements are unavailable.

This penalty exception underscores the pivotal role of child care in supporting work and also recognizes that the lack of appropriate, affordable child care can create unacceptable hardships on children and families. To keep families moving toward self-sufficiency, and to assess the State's compliance with this penalty exception, we have described in the preamble to § 274.20 our expectation that States will have a process or procedure that: (1) Enables a family to demonstrate its inability to obtain needed child care; (2) informs parents that the family's benefits cannot be reduced or terminated when they demonstrate that they are unable to work due to the lack of child care for a child under the age of six; and (3) advises parents that the time during which they are excepted from the penalty will still count toward the time limit on benefits at section 408(a)(7).

Because the State has the authority to determine whether the individual has demonstrated adequately an inability to obtain needed child care, as the regulations indicate, we expect the State to define the terms ''appropriate child care,'' ''reasonable distance,'' ''unsuitability of informal care,'' and ''affordable child care arrangements.'' The State should also provide families with the criteria, including the definitions, that it will use to implement the exception and the means by which a parent can demonstrate an inability to obtain needed child care.

The proposed regulations for the Child Care and Development Fund (CCDF) reinforce the importance of providing this vital information to parents by requiring the child care Lead Agency, as part of its consumer education efforts, to inform parents about: (1) The penalty exception to the TANF work requirement; (2) the State's process or procedure for determining a family's inability to obtain needed child care; and (3) the fact that the exception does not extend the time limit for receiving assistance. The information must also include the definitions or criteria that the State employs to implement the State's determination process.

Under the proposed CCDF rule, we would require the Lead Agency for child care to coordinate with the TANF agency in order to understand how the TANF agency defines and applies the terms of the statute regarding the penalty exception and to include the definitions (listed above) and criteria in the CCDF plan.

Thus, the proposed CCDF rule requires that the Lead Agency would submit the definitions and criteria used by the State in determining whether child care is available. We took this child care proposal into consideration in drafting our proposed rule. Under § 271.15, we would require that the definitions and criteria be submitted, but would not require that the TANF agency submit them directly. Our goal is to ensure that these items are made available for audit and penalty purposes and that they be part of the public record.

If, based on the child care final rule, we would not expect to receive the criteria and definitions from the Lead Agency, we would add a data element to one of the proposed TANF reporting forms (such as the annual addendum) to incorporate them.

Does the imposition of a penalty affect an individual's work requirement? (§ 271.16)

Section 408(c) of the Act, as amended by section 5001(h) of Pub. L. 105–33, clarifies that sanctions against recipients under TANF ''shall not be construed to be a reduction in any wage paid to the individual.'' This means that imposition of such penalties would not result in a reduction in the number of hours of work required.

Subpart B—State Accountability

How will we hold a State accountable for achieving the work objectives of TANF? (§ 271.20)

Work is the cornerstone of welfare reform. Research has demonstrated that early connection to the labor force helps welfare recipients make important steps toward self-sufficiency. The rigorous work participation requirements embodied in the legislation provide strong incentives to States to concentrate their resources in this crucial area. This summary section makes the legislation's focus on work and the requirements for work clear, while other sections address each of these areas in more detail.

This section of the proposed regulations describes what a State must do to meet the overall and two-parent work participation rates. It explains that a State must submit data to allow us to measure each State's success with the work participation rates. It notes that a State meeting the minimum rates will have a reduced MOE requirement but that a State failing to meet them risks a financial penalty.

What overall work rate must a State meet? (§ 271.21)

Section 407(a) establishes two minimum participation rates that a State must meet for FYs 1997 through 2002 and thereafter. The first, the overall work rate, is the percentage of all families receiving assistance who must participate in work activities by fiscal year. This section lists the statutory overall participation rate by fiscal year. The second is the work rate for two-parent families, addressed below at §§ 271.23 and 271.24.

How will we determine a State's overall work rate? (§ 271.22)

This section of the proposed regulation restates in clear terms the participation rate calculation specified in the statute. In particular, without changing its meaning, we have phrased the denominator in a way that we think is easier to understand than the statutory language.

We received many requests for guidance concerning how, for purposes of the participation rates, a State should treat a family that it exempts from work requirements. A State has the flexibility to establish any exemptions it chooses; however, with two exceptions (discussed below), the legislation offers no room to remove categories of recipients from the denominator. PRWORA embodies the views that: (1) Work is the best way to achieve independence; and (2) each individual should participate to his or her greatest ability. As waiver projects have demonstrated, innovative State programs can often find meaningful ways for nearly every recipient to participate in work-related activities. Therefore, the statute and the proposed regulation require nearly all families to be included in the calculation of the participation rates.

The proposed regulation makes clear that a State may count as a month of participation any partial months of assistance, if an adult in the family is engaged in work for the minimum average number of hours in each full week that the family receives assistance in that month. These families are already included in the denominator since they are recipients of assistance in that month.

This provision ensures that a State receives credit for its efforts in the first and last months that a family receives assistance. Without it, a State would have an inadvertent incentive to start and end assistance as close as possible to the beginning of the month, rather than as families need it. We think that measuring work in full weeks of

assistance during a partial month is consistent with the spirit of PRWORA. We have proposed the same policy for partial months of assistance under the two-parent rate at § 271.24.

During the development of the proposed regulation and in consultation with stakeholders, one important topic of discussion was how to treat victims of domestic violence whom the State is helping under the Family Violence Option (FVO), under section 402(a)(7). We recognize that there are circumstances in which a State should and will temporarily waive work requirements for some domestic violence victims. One question we considered was how such waivers would affect the calculation of the participation rates.

Many commenters urged us to remove all victims of domestic violence from the denominator of a State's participation rate so that the State would not be penalized for choosing to develop appropriate responses to their problems. Instead of changing the basic calculation of the work participation rates, we chose to address this situation under the definition of ''reasonable cause'' for States failing to meet their rates. Our approach is targeted, so as not to provide blanket exemptions for those who have ever suffered domestic violence, but instead to provide appropriate protections and supports for TANF recipients who need them.

We believe that keeping recipients who are being assisted under the FVO in the calculation is the better reading of the statute. In the calculation of work participation rates, the statute provides only two exemptions from the denominator: one for a single custodial parent of a child under 12 months old; the other for a recipient who is being sanctioned but has not been so for more than three of the last 12 months. The law is very specific concerning these exemptions and does not provide for others.

We believe victims of domestic violence and the objectives of the Act will be best served if we maintain the integrity of the work requirements and promote appropriate services to the victims of domestic violence. Service providers who work closely with victims of domestic violence attest that work is often a key part of the solution to domestic violence problems; it may provide both emotional support and a path to financial independence. Thus, we do not want to create an incentive for States to waive work requirements routinely for a recipient who does not need such a waiver.

However, we also hear that, in some cases, going to work may aggravate tensions with a batterer and place the victim at risk of further danger. Under our proposed rules, States should feel free to provide temporary waivers of work requirements in such cases.

Given the pressure States are under to meet the work participation rates, and the individualized circumstances that domestic violence victims face, we have concerns that automatically removing victims of domestic violence from the calculations could result in inappropriate exemptions or deferrals of work requirements for victims of domestic violence. We also have concerns that it could result in diversion of resources away from these families to other categories of recipients. We believe our ''reasonable cause'' proposal and our strategy for monitoring the effect of these provisions will protect against these possible negative effects.

You will also note that this section of the regulation addresses our concern that States could use the flexibility inherent in the statute and these regulations to avoid the work participation rates for certain families in the TANF program. Because the participation rates include only those families receiving assistance that include an adult, the possibility exists that States could try to keep cases out of the calculation by converting them to child-only cases. Under our proposal, States would continue to have discretion in defining ''families receiving assistance'' and deciding the circumstances under which adults and children receive assistance in the State. However, we would reserve the right to add cases back into the calculation if we determine that a State was defining families solely for the purpose of avoiding a work penalty. Also, we are proposing to require that States submit annual reports to us specifying how many families were excluded from the overall work participation rate, together with the basis for any exclusions.

Please see § 271.52 of the proposed regulations for further discussion of the reasonable cause criteria.

What two-parent work rate must a State meet? (§ 271.23)

As with § 271.21, this section restates the minimum work participation rates for two-parent families established in the statute.

States should note the sharp increases in the two-parent participation rate. Congress has high expectations that States will help the vast majority of adults in two-parent families find jobs or participate in other work activities. We note that most States had difficulty meeting the less ambitious JOBS participation rates for unemployed parent families (UPs), the primary two-parent cases under AFDC. For several reasons, the new rates under TANF are much more demanding than they were under JOBS. First, the TANF rate is a ''two-parent'' rate, not a rate just for UPs. Secondly, the denominator includes much more of the caseload; it recognizes many fewer exemptions. Finally, PRWORA lifted the restrictions on providing assistance to two-parent families. Thus, in some States, many more two-parent families could be eligible for assistance and subject to the work requirements than under prior law.

We strongly encourage each State to consider carefully what it must do to get two-parent families working. In some cases, States may need to make substantial changes to their program designs over time. In the first few years of operating TANF, the participation rates are at their lowest and pro rata reductions may significantly reduce the minimum required rates. We think it is important for States to capitalize on this initial period to invest in program designs that will allow them to achieve the higher participation rates in effect in later years. We intend to assist States in this endeavor through technical assistance and by sharing promising models as they emerge.

Finally, we would like to make it clear that providing a non-custodial parent with TANF services need not cause a State to consider the family a two-parent family for the purposes of the participation rate. States could define two-parent families as those with two parents living in the same household.

How will we determine a State's two-parent work rate? (§ 271.24)

The proposed regulations express the two-parent work participation rate in terms very similar to those we used for the overall rate. States should note that any family that includes a disabled parent is not considered a two-parent family for purposes of the participation rate and, thus, is not included in the numerator or denominator of the two-parent rate. They should also note the prohibition against defining families receiving assistance for the purpose of excluding cases from two-parent participation rate. (See § 271.22 for additional discussion.)

It is important to note that, in accordance with the statute, we calculate both participation rates in terms of families, not individuals. Whether we include the family in the numerator depends on the actions of individuals, but an entire family either

counts toward the rate or does not. In the case of a two-parent family, whether a family counts may depend on the actions of both parents.

Section 408(a)(7) limits the receipt of Federal TANF assistance to 60 months for any family, unless the family qualifies for a hardship exception or disregard of a month of assistance. (In our discussion of § 274.1, we explain that months of receipt are disregarded when the assistance was received either: (1) by a minor child who was not the head of a household or married to the head of a household; or (2) while an adult lived in Indian country or in an Alaska Native Village with 50 percent or greater unemployment.) We have received inquiries concerning the effect of a time-limit exception or disregard on the participation rates. In fact, the time limit does not have a bearing on the calculation of the participation rate. All families must be included in the participation rate, unless they have been removed from the rate for one of the two work-related exemptions (i.e., the family is subject to a penalty but has not been sanctioned for more than three of the last 12 months, or the parent is a single custodial parent of a child under one year of age and the State has opted to remove the family from the rate).

Does a State include Tribal families in calculating these rates? (§ 271.25)

States have the option of including in the participation rates families in the State that are receiving assistance under an approved Tribal family assistance plan or under a tribal work program. If the State opts to include such families, they must be included in the denominator, as well as the numerator where appropriate. We are particularly interested in receiving comments relating to the implementation of this option, such as Tribal reporting of participation information to the State.

Subpart C—Work Activities and How To Count Them

What are ''work activities?'' (§ 271.30)

Section 407(d) specifies the twelve work, training, and education activities in which individuals may participate in order to be ''engaged in work'' for the purpose of counting toward the work participation rate requirements. Congress did not define these activities further. Some have commonly understood meanings from their use over time or from operational definitions adopted by prior employment and training programs. But several of the permissible activities, such as ''vocational educational training'' and ''job readiness assistance,'' do not have commonly understood meanings and are subject to interpretation. Because these terms lack a common definition or understanding, we began receiving questions soon after the enactment of PRWORA about whether we would define them in the rules.

To address this problem, we first examined legislative intent. In enacting TANF, Congress wanted to give States significant flexibility in administering TANF and limit Federal authority to regulate. At the same time, Congress wanted to create a work-focused program of time-limited assistance. In addition, it established significant data reporting requirements for States, including information about the activities in which individuals participate. As discussed below, these three purposes do not clearly point in the direction of more or less definition. Thus, the statute itself did not clearly resolve the matter.

Secondly, we engaged in wide and extensive consultation with a variety of groups to determine what others thought about the definition issue. Most groups, particularly States and their organizational representatives, overwhelmingly urged us not to define the work activities further and recommended that definitions be left to States. They suggested that we could use this preamble to underscore the flexibility and latitude intended by the statute, especially in vocational education. A few individuals asked whether a State would be subject to a penalty if it did not define activities in a way we thought appropriate. They suggested providing illustrative examples or including guidance in the preamble on activities that could not count as work. Several participants thought that we should offer general guidance on the definition of activities to ensure uniform data reporting across States.

Representatives of the education community and some from the labor community expressed concerns about how work-focused activities will affect programs that have been operating under the Job Opportunities and Basic Skills Training (JOBS) program. They emphasized the positive correlation between educational attainment and job acquisition and advancement, as well as the importance of parental education levels and involvement in the education of their children. They also expressed concern that, without additional education and training, many families will find it difficult to hold meaningful employment, much less to advance. They wanted us to take this opportunity to define work activities in ways that fostered education while promoting work.

In this regulation, we are proposing not to define the individual work activities. In making our decision, we considered the following.

Congress did not define the terms and clearly gave States overall flexibility to design their programs. Certainly, one element of that flexibility could be to allow each State to define the work activities in order to address its unique needs and circumstances.

We recognize that definitions of terms could help clarify the parameters of a work-focused program design. For example, without Federal definitions, States could conceivably include a range of activities that may not enhance work skills or might not be considered ''work experience'' by potential employers. However, in light of the five-year time limit, we expect that States will be very careful to establish programs that do not work to prolong a family's use of assistance.

After considering the extensive input we received, we think that the goals and objectives of the legislation will be better served by having each State define the work activities. We believe States will use the flexibility of the statute to formulate a variety of reasonable interpretations leading to greater innovation, experimentation, and success in helping families become self-sufficient quickly.

Because the flexibility could also be used in ways that do not further Congressional intent, we are requiring each State to provide us with its definitions of work activities for both TANF and separate State programs under the data collection requirements at §§ 275.9 and 273.7. We are concerned that different TANF definitions could affect the vulnerability of States to penalties for failure to meet the participation rate. This data collection will help us determine whether this is in fact a serious problem; to the extent possible, we want to ensure an equitable and level playing field for the States. Over the next several years, we will carefully assess the types of programs and activities States develop and will actively publicize and share the results of our findings. If necessary at some time in the future, we will initiate further regulatory action.

Before leaving the subject of work activities and program design, we would like to remind States about some key research findings from prior welfare-to-work programs. According to the Manpower Demonstration Research Corporation's publication, *Work First:*

The most successful work first programs have shared some characteristics: a mixed

strategy including job search, education and training, and other activities and services; an emphasis on employment in all activities; a strong, consistent message; a commitment of adequate resources to serve the full mandatory population; enforcement of participation requirements; and a cost-conscious management style.

While the most successful programs consistently and strongly emphasize work, the actual program designs recognize and address the critical role education plays in preparing adults for work. As more and more recipients engage in work, State caseloads may reflect higher proportions of the educationally disadvantaged. In combination with other work activities, education may become more important in improving basic communication, analytical and work-readiness skills of recipients. Thus, States may need to integrate adult basic skills, secondary education, and language training within high-quality vocational education programs. Such program designs encourage recipients to continue acquiring necessary educational skills and foster programs that prepare recipients for higher-skill, higher-wage jobs.

In his most recent ''State of the Union'' address, President Clinton identified education as his number one priority. He Issued a call to action for American education based on principles necessary to prepare people for the 21st century. One principle was to make sure that learning is available for a lifetime.

We encourage States to adopt program designs that take advantage of existing educational opportunities. States may use the statutory flexibility to design programs that promote educational principles by:

- Actively encouraging adults and children to finish high school or its equivalent;
- Expecting family members to attain basic levels of literacy and to supplement their education in order to enhance employment opportunities;
- Encouraging family literacy; and
- Promoting community-based work-related vocational education classes, created in collaboration with employers.

States could also make it easier for individuals to combine school and work. For example, they could develop on-campus community work experience program positions, where child care is also available. They could also encourage schools to use work-study funds for students on welfare and then count the hours worked in those programs toward work requirements.

While we have not regulated the definition of work activities, we want to ensure that recipients and children both experience positive outcomes. This is a particularly significant issue when child care is the work activity. For this to happen, child care arrangements should be well developed, implemented and supported.

Research has found that quality child care is critical to the healthy development of children and that providers who choose to care for children create more nurturing environments than those who feel they have no choice and are providing care only out of necessity. Thus, States should assess whether recipients have an interest in providing child care before assigning them to this activity.

In addition, States should provide training, supervision and other supports to enhance caregiving skills if they wish recipients to attain self-sufficiency. Such supports would assist the development of both the caregivers and the children in care.

A State that assesses the individual's commitment to child care and provides opportunities for training in health and safety (*e.g.*, first aid and CPR), nutrition, and child development, should see successful outcomes for both the adults and children in care.

Finally, the stability of child care arrangements affects outcomes for both parents and the children in care. When parents feel comfortable with their child care arrangements, their own participation in the work force becomes more stable. Stability fosters emotional security for children. Thus, stability should be one of the factors States take into account when assigning participants to child care as a work activity.

How many hours must an individual participate to count in the numerator of the overall rate? (§ 271.31)

Section 407(c) specifies the minimum hours an individual must participate to count in the State's participation rate calculation. There are two related requirements. First, there is a minimum average number of hours per week for which a recipient must be engaged in work activities. The average weekly hours are reflected in the following table:

If the fiscal year is:	All families	
	Then the participation rate is: (percent)	and the average weekly hours of work are:
1997	25	20
1998	30	20
1999	35	25
2000	40	30
2001	45	30
2002	50	30

Second, the law requires that at least an average of 20 hours per week of the minimum average must be attributable to certain specific activities. These activities are:

- Unsubsidized employment;
- Subsidized private sector employment;
- Subsidized public sector employment;
- Work experience;
- On-the-job training;
- Job search and job readiness assistance for no more than four consecutive weeks and up to six weeks total in a year;
- Community service programs;
- Vocational educational training not to exceed 12 months;
- Provision of child care services to an individual who is participating in a community service program.

Note: The limitation that at least 20 hours come from certain activities does not apply to teen heads of households; however, there are other limitations related to teen heads of households. Please refer to § 271.33 below.

After an individual meets the basic level of participation, the following activities may count toward the total work requirement hours of work:

- Job skills training directly related to employment;
- Education directly related to employment for those without a high school diploma or equivalent;
- Satisfactory attendance at a secondary school or GED course for those without a high school diploma or equivalent.

In our consultations, several people asked whether a State may average the hours of participation of different recipients to reach the minimum average hours required by the work participation rate, as they could in the JOBS program. PRWORA does not permit combining and averaging the hours of work of different individuals. However, we have clarified in the rules that a State may average an individual's weekly work hours over the month to reach the minimum average number of hours per week that the individual must engage in work.

Our consultations uniformly suggested that we did not need to provide any further regulatory guidance or clarification in this area. Thus, in the

regulatory text, we have paraphrased the statute in simple, understandable terms.

How many hours must an individual participate to count in the numerator of the two-parent rate? (§ 271.32)

For two-parent families, section 407(c) specifies that the parents must be participating in work activities for a total of at least 35 hours per week and that a specified number of hours be attributable to specific work activities. A State may have one parent participate for all 35 hours, or both parents may share in the work activities. If the family receives federally-funded child care assistance and an adult in the family is not disabled or caring for a severely disabled child, then the parents must be participating for a total of at least 55 hours per week. As before, a specified number of hours must be attributable to certain activities (listed below). We summarize the requirements for two-parent families in the table below:

If the fiscal year is:	Two-parent families	
	then the participation rate is: (percent)	and the weekly hours of work (without/with federal child care) are:
1997	75	35/55
1998	75	35/55
1999	90	35/55
2000	90	35/55
2001	90	35/55
2002	90	35/55

In the first situation (where the weekly total must be at least 35 hours), at least 30 hours must be attributable to the same specific activities as in the overall rate. In the second situation (where the weekly total must be at least 55 hours), 50 hours must be attributable to these activities. Again, these are:

- Unsubsidized employment;
- Subsidized private sector employment;
- Subsidized public sector employment;
- Work experience;
- On-the-job training;
- Job search and job readiness assistance for no more than four consecutive weeks and up to six weeks total in a year;
- Community service programs;
- Vocational educational training (for not more than 12 months);
- The provision of child care services to an individual who is participating in a community service program.

Therefore, no more than five of the appropriate minimum hours may be attributable to education related to employment, high school (or equivalent), or job skills training activities.

During our consultations, many thought it was unclear whether the 35-hour requirement is a minimum for each week or whether it is a minimum weekly average, as is the case in the overall rate. For example, if a parent participated 40 hours one week and 30 hours the next, the question arises whether (s)he would meet the minimum requirement for both weeks. To provide maximum flexibility for States to meet the program goals, we have clarified in the proposed rule that, as long as the parents' average total hours equal at least 35 hours per week, the individual meets the participation requirement.

Other than this clarification, we have mirrored the statute in simple, understandable terms.

What are the special requirements concerning educational activities in determining monthly participation rates? (§ 271.33)

Section 407(c)(2)(C) provides that a teen who is married or the single head-of-household is deemed to be engaged in work for a month if (s)he maintains satisfactory attendance at a secondary school or the equivalent or participates in education directly related to employment for an average of at least 20 hours per week. Since we have heard few comments about this provision, our proposed rule paraphrases the statutory language.

To reinforce the emphasis on work, section 407 limits educational activities in two ways:

(1) An individual's participation in vocational educational training may count for participation rate purposes for a maximum of 12 months; and

(2) For each participation rate, not more than 30 percent of individuals determined to be engaged in work for a month may count by reason of participation in vocational educational training or, for teens who are married or single heads of households, either by reason of maintaining satisfactory attendance at secondary school (or the equivalent) or participating in education directly related to employment. Teen parents are only included in the 30 percent limitation in fiscal year 2000 and thereafter.

When PRWORA was enacted, there was substantial controversy about precisely how the second limitation would apply. However, Pub. L. 105–33 modified this provision, making the limitation much clearer. The description above and the regulation at § 271.33 reflect the new provision, as amended by Pub. L. 105–33.

Are there any limitations in counting job search and job readiness assistance toward the participation rates? (§ 271.34)

Section 407(c)(2)(A)(i) limits job search and job readiness assistance in several ways.

First, an individual generally may not be counted as engaged in work by virtue of participation in job search and job readiness assistance for more than six weeks. No more than four of these weeks may be consecutive. During our consultations, we were asked whether these limitations apply for the lifetime of the individual, per spell of assistance, or per fiscal year.

Many people recommended treating it as a fiscal-year limit for two policy reasons. First, since the participation rate itself is tied to the fiscal year, it makes sense to have the limitation apply to the same time frame. Second, a different policy could force States to place individuals in other, less appropriate activities just to meet the participation rate. Moreover, research indicates that job search activities are an instrumental component in effective work program designs.

The statutory language supports the fiscal-year interpretation. The job search language at 407(c)(2)(A)(i) limiting the weeks of participation states that the limit is ''notwithstanding paragraph (1).'' Paragraph (1) refers to the determination of whether a recipient is engaged in work for a month ''in a fiscal year.'' Thus the reference to paragraph (1) puts the job search limitation in the context of a calculating whether an individual is engaged in work in the fiscal year. Based on these considerations, we have clarified in the proposed rules that the six-week limitation applies to each fiscal year.

The legislation and our proposed rules allow the six-week limit on job search and job readiness assistance to extend to 12 weeks if the unemployment rate of a State exceeds the national unemployment rate by at least 50 percent, or if the State could qualify as a needy State for the Contingency Fund.

Finally, our rules paraphrase the statute (at section 407(c)(2)(A)(ii)) in allowing a State to count three or four days of job search and job readiness assistance during a week as a full week of participation on one occasion for the individual.

Are there any special work provisions for single custodial parents? (§ 271.35)

Section 407(c)(2)(B) provides a special participation rule for single parents or caretakers with young children. A single

parent or caretaker with a child under the age of six will be deemed to be engaged in work for a month if s(he) participates in work activities for an average of at least 20 hours per week.

This provision has little relevance in FYs 1997 and 1998, when, for the overall rate, the required number of hours for all individuals is 20 hours per week. But, when the required number of hours rises to 25 hours per week in FY 1999 and to 30 hours per week thereafter, this provision allows single parents or caretakers to spend time with younger children. It also may enable those with young children to fulfill their work obligations while their children are in preschool activities.

Because our consultations yielded few comments regarding this provision, the proposed regulations paraphrase the statute.

Do welfare reform waivers affect what activities count as engaged in work? (§ 271.36)

This section is simply a cross-reference to § 271.60, which addresses welfare reform demonstration waivers. We thought it would be helpful to include it so that readers would know to refer to this important exception to the work activities and hours specified in subpart C.

Subpart D—Caseload Reduction Factor for Minimum Participation Rates

Is there a way for a State to reduce the work participation rates? (§ 271.40)

Section 407(b)(3) requires us to issue regulations to reduce a State's minimum participation rate based on reductions in its welfare caseload. Under this provision, a State's participation rate for any fiscal year will be reduced by the same number of percentage points as the reduction in the State's average monthly caseload since 1995. The reduction reflects the difference between the State's caseload under the IV–A State plan in effect in FY 1995 and the average number of cases receiving assistance, including assistance under a separate State program, in the prior year.

The statute specifies that the reduction must not reflect any caseload changes that resulted from either Federal requirements or State changes in eligibility between the previous and current IV–A programs.

States have an inherent interest in achieving caseload reductions; this provision increases that interest. If a State were to reduce its caseload, under the caseload reduction provision it could qualify for lower participation rate requirements, reduce the risk of a penalty for failing to meet the work participation rates, and increase its chance of qualifying for a lower TANF MOE requirement. It could also free up resources to serve recipients in alternative ways.

How will we determine the caseload reduction factor? (§ 271.41)

We found it difficult to develop an appropriate methodology that could quantify different types of caseload reductions. In our extensive consultations, we found no straightforward methodology for estimating the reduction factor.

We considered and rejected two alternative approaches for calculating the caseload reduction factor.

The first alternative was to use Medicaid records to estimate the effect of eligibility changes. Initially, we thought this might be a viable solution because, under section 114 of PRWORA, States continue to determine Medicaid eligibility on the basis of the AFDC eligibility rules in effect as of July, 1996. Thus, in theory, this provision might give us a count of how many individuals would have been eligible for benefits in the absence of Title IV–A eligibility changes. However, this option proved not to be feasible because Medicaid data are not collected in a manner that is useful for this purpose. In addition, the statute allows States to modify AFDC rules for Medicaid eligibility purposes; adjusting for such changes would greatly complicate any estimations.

Our second alternative was to estimate the caseload reduction factor for each State based on a computer model. The hope was that we might estimate the caseload effects of State and Federal policy changes using State-reported information on policy changes and Current Population Survey household data. However, this option also was not feasible due to the difficulty of developing computer models that could accurately estimate the effects on State caseloads. In particular, using Census data would make it difficult to estimate the effects of certain policy changes in small States. Finally, we were concerned that this approach would run counter to our intention of creating a simple, understandable methodology.

Because of the difficulty we had in establishing a uniform methodology, we are proposing to determine the appropriate caseload reductions that apply to each State based on information and estimates reported to us by the State. The statute specifies that the responsibility for establishing the caseload reduction factors lies with us. We will analyze the information and estimates provided, determine whether we think they are reasonable (based in part on State-by-State comparisons), and conduct periodic, on-site reviews to validate the accuracy of the information. This approach involves States in the process of assessing the causes of caseload changes. It also tries to ensure program accountability and preserve the focus on work.

As the first step in the process, we will be using the caseload data reported to us by the State. To establish the caseload base for fiscal year 1995, we will use the number of AFDC cases reported on ACF–3697, Statistical Report on Recipients Under Public Assistance. For fiscal years 1996–1998, we will be using data from this same report, supplemented by caseload information from the TANF Data Report and the TANF MOE Data Report, beginning with the fourth quarter of fiscal year 1997, where appropriate. For fiscal years 1999 and beyond, we will only be using caseload information from the TANF Data Report and the TANF MOE Data Report to compare against the fiscal year 1995 base year information. Therefore, in order to qualify for a caseload reduction, a State must have reported information on monthly caseloads for the previous year (including cases in separate State programs), based on the definition of a case receiving assistance, as defined at § 271.43.

Next, to receive a reduction in the participation rates, a State must provide us with sufficient data and information to calculate the reduction. To facilitate such reporting, a State must submit the Caseload Reduction Report to us containing the following information:

(1) A complete listing of and implementation dates for all eligibility changes, including those mandated by Federal law, made by the State since the beginning of FY 1995, and a listing of the reasons (such as found employment) for case closures;

(2) A numerical estimate of the impact on the caseload of each eligibility change or case closure reason;

(3) Descriptions of its estimating methodologies, with supporting documentation; and

(4) A certification from the Governor that it has taken into account all reductions resulting from changes in Federal and State eligibility.

States should note that the information required here to make a determination about the reduction factors is distinct from the case-record information proposed as an optional reporting requirement at § 275.3(d).

We will determine whether the methodology and resulting estimates are reasonable. We will compare each State's methodology, estimates and impact against that of other States. We will also review the quality and completeness of data and the adequacy of the documentation. We may discuss the estimates and methodologies with State staff and may request additional information or documentation to make adjustments in the estimates. We will also conduct periodic, on-site visits and examine case-record information in order to validate the information, data and estimates provided.

The proposed regulation requires States to provide us with any additional information within two weeks of our requesting it. We realize that this is a short time period, but we have proposed this deadline because a State's MOE requirement for the fiscal year may hinge upon the caseload reduction calculations. A State that achieves the participation rates must only reach 75 percent of its historic expenditures for the MOE requirement, rather than 80 percent. The reduction factor may play a significant part in whether States meet the participation rates. We have given ourselves a limited timeframe of 90 days in which to evaluate, make any necessary modifications, and establish caseload reduction factors. We must acquire and evaluate any additional information we need within that period. In light of these constraints, we think that the two-week timeframe is reasonable.

Many of the eligibility changes States have made have a differential effect on two-parent cases (compared to the impact on cases overall). We did a State-by-State comparison of the overall caseload reductions and the two-parent caseload reduction between fiscal years 1995 and 1996 and noted dramatic differences for almost all States. Therefore, we are requiring States to calculate two separate sets of caseload reduction estimates, one for the overall caseload and another for two-parent cases. States must base their overall caseload reduction estimates on decreases in cases receiving assistance in the prior year compared to the AFDC caseload in FY 1995. States must base their caseload reduction estimates for two-parent families on decreases in their two-parent caseload compared to the AFDC Unemployed Parent caseload in FY 1995.

Which reductions count in determining the caseload reduction factor? (§ 271.42)

In drafting this provision, Congress recognized that some, but not all, caseload reductions in a State should be allowed to reduce work participation rates. Allowing States too much credit could mean that they could avoid accountability for meeting the law's tough new work requirements; they could simply deny families assistance and face much lower requirements. Allowing States too little credit would mean that the States that are most successful in moving families into employment and off their caseloads would not get the intended reward for their efforts.

In implementing this provision, therefore, our primary goals were to: (1) reinforce strongly the work participation requirements of the Act; (2) give States full credit for caseload reductions that result from moving people into work; and (3) avoid categorizations of eligibility changes that would create inadvertent incentives for changes in State policy that were unrelated to work and harmful to vulnerable families. Thus, we propose to give States credit for caseload reductions except when those caseload reductions arise from changes in eligibility rules that directly affect a family's eligibility for benefits (e.g., more stringent income and resource limitations, time limits, grant reductions, changes in requirements based on residency, age or other demographic or categorical factors). A State need not factor out calculable effects of enforcement mechanisms or procedural requirements that are used to enforce existing eligibility criteria (such as fingerprinting or other verification techniques) to the extent that such mechanisms or requirements identify or deter families ineligible under existing rules.

In short, we are seeking to achieve the balance identified by Congress: that a State should receive credit for moving families off welfare, but should not be able to avoid its accountability for work as a result of any changes that restrict program eligibility.

Likewise, a State can argue that some or all of the families in separate State programs should not be included in this calculation, based on the type of family served or the nature of benefits provided, but it must substantiate such a claim with specific data on the family. Case-record information on the characteristics of families served in separate State programs and data on the services provided in those programs will contribute to this discussion. Under part 275 and § 271.41(e), we propose that States wishing to claim a caseload reduction factor must report these data.

What is the definition of a ''case receiving assistance'' in calculating the caseload reduction factor? (§ 271.43)

To determine the caseload reduction factor, we will look at caseloads in both TANF and separate State programs. Using the definition of assistance proposed under part 270, we propose to base the calculation on all cases in the State receiving IV–A assistance, except those receiving one-time, short-term assistance or services with no monetary value.

When must a State report the required data on the caseload reduction factor? (§ 271.44)

The caseload reduction factors reflect the caseloads in the previous year compared to FY 1995. For each fiscal year, a State must report its data by November 15th. We will approve or reject a State's proposed reduction within 90 days of that date, or by February 15th.

Subpart E—State Work Penalties

While PRWORA embodies State flexibility in program design and decision-making, it also embodies the principle of accountability. Where a State does not live up to the minimum standards of performance, it faces serious financial penalties. One of the principal areas of accountability is in the State's provision of work and work-related activities that recipients need to leave the system and become self-sufficient. The work participation rates are demanding, but designed to ensure that recipients move as quickly as possible into work and towards independence. This is especially important given the time-limited nature of Federal TANF benefits.

Almost all of the groups with which we consulted were interested in the penalty related to the work participation rates. Most had strong views about what should be a reasonable cause exception to the penalty. They stressed that the criteria should be flexible, leaving room to respond to circumstances in different States. They also urged us to examine a State's good-faith efforts in determining the severity of a penalty.

In structuring this part of the proposed regulations, we have attempted to balance the imperative of State accountability in the work participation rates with the knowledge that each State enters TANF from a different standpoint and with different plans for helping its recipients.

What happens if a State fails to meet the participation rates? (§ 271.50)

In accordance with section 409(a)(3), as amended by Pub. L. 105–33, if we

determine that a State has not achieved either or both of the minimum participation rates in a fiscal year, we must reduce the SFAG payable for the following fiscal year. The initial penalty is five percent of the adjusted SFAG and increases by two percentage points for each successive year that the State does not achieve the participation rates. We may reduce the penalty amount based on the degree of noncompliance, as discussed at § 271.51. The total work participation penalty can never exceed 21 percent of the adjusted SFAG. (Please refer to § 272.1(d) for a discussion of the total penalty limit under TANF.)

If a State fails to provide complete and accurate data on work participation, as required under section 411(a) of the Act and part 275 of the proposed rules, we will determine that a State has not achieved its participation rates, and the State will be subject to a penalty under this part. We have the authority to penalize a State that does not report its work participation data for failure to report (under section 409(a)(2)). However, in this case, we thought it would be more appropriate to penalize the State for failure to meet its work rate. First, this policy is consistent with the approach we are taking when States fail to report information related to other penalty determinations. Also, we did not want to create a situation where non-reporting States would face lesser penalties than reporting States, and we did not believe duplicate penalties were warranted.

Under what circumstances will we reduce the amount of the penalty below the maximum? (§ 271.51)

The statute requires us to reduce the amount of the penalty based on the degree to which the State is not in compliance with the required participation rate. However, it specifies neither the measures of noncompliance nor the extent of reduction. The proposed rule uses three criteria to measure the degree of noncompliance. The statute also gives us the discretion to reduce the penalty if the State's noncompliance resulted from certain specific causes; we address this latter issue separately, in the section entitled ''Discretionary Reductions.''

We are proposing that, a State will not receive a penalty reduction based on the severity of the failure or our discretionary authority, if a State has diverted cases to a separate State program for the purpose of avoiding the work participation rates. We want to ensure that each State makes a serious effort to provide work and work-related activities in any State-only funded programs. As we indicated in program announcement TANF–ACF–PA–97–1, we do not believe Congress intended a State to use separate State welfare programs to avoid TANF's focus on work.

Required Reduction

In part, we will measure noncompliance on the basis of whether the State failed one or both rates for the fiscal year and which participation rate it failed, if only one. First, we believe that a State that fails the two-parent rate should be subject to a smaller penalty than a State that fails the overall rate or both. Second, we believe it is appropriate to consider the size of the two-parent caseload in deciding how much weight to give a failure of the two-parent rate only.

In looking at the data for FY 1996, we noted that the two-parent participation rate on average affects a very small percentage of a State's entire caseload; the mean State percentage was about 6.6 percent, but the median was only about 2.4 percent.

Under our proposal, the maximum penalty a State would face for failure to meet the two-parent rate would depend directly on how much of the total caseload in the State was comprised of two-parent families.

The State would not get a similar reduction if it failed the overall rate because all cases, including two-parent cases, are reflected in the overall rate.

We believe a State that failed with respect to only a small percentage of its cases should not face a huge penalty. At the same time, we want to ensure that States make adequate commitments to achieving the two-parent participation rates and that our policies support State efforts to extend benefits to two-parent families. We would like comments as to whether our proposal properly balances these objectives.

Finally, we will measure noncompliance on the basis of the severity of a State's failure to achieve the required rate. We are proposing to reduce the penalty in direct proportion to the State's level of achievement above a threshold of 90 percent. We would compute a ratio whose numerator is the difference between the participation rate a State actually achieved and the applicable threshold rate and whose denominator is the difference between the applicable required participation rate and the applicable threshold rate.

For example, assume a State achieved 95 percent of the required rate, or 5 percentage points above the threshold. These 5 percentage points represent 50 percent of the difference between the required rate and the threshold. Therefore, we would reduce by 50 percent that portion of the penalty (either 90 percent or 10 percent) allocated to the rate the State failed.

In drafting the regulation, we wanted to strike the right balance between the importance of work and the requirement to reduce the penalty based on the degree of noncompliance. Although our first inclination was to make reductions in proportion to the State's achievement toward the required rate, our experience in the JOBS program led us to consider creating a threshold below which we would grant no reduced penalty. We were concerned that, as in the JOBS Unemployed Parent participation rates, there would be States whose level of achievement was negligible, particularly with the two-parent caseload, and thus did not merit a reduced penalty. Given that experience, we thought it was essential to have a threshold.

We considered basing the threshold on the past performance of the States, for example at the 50th or 75th percentile of participation the previous year. However, the data we had from the JOBS program did not prove sufficient to determine where we should set such a State performance threshold. Instead, we chose to establish a threshold as a percentage of the required participation rate. We set the participation threshold at 90 percent because of the emphasis in the statute on making the work penalty meaningful. In particular, Pub. L. 105–33 amended the work penalty provision so that the amount was fixed, removing the discretion we had under PRWORA to set a lesser penalty amount. We think this shows Congressional intent that the work penalty should be meaningful. To avoid undercutting this intent, we believe that a State should make substantial progress in meeting the target rates before we should consider a reduction.

Moreover, the threshold works in conjunction with the penalty allocation we are proposing for failing to meet just one rate. Given their combined effects, we think it is appropriate to set the threshold at 90 percent.

We are particularly interested in any comments readers have concerning the measures of noncompliance we have proposed.

Discretionary Reductions

The proposed regulation also reflects the discretion that we have to reduce the amount of the penalty if the State could qualify as a needy State for the Contingency Fund. The definition of ''needy State'' is based on especially high unemployment or large numbers of Food Stamp recipients in the State. Please see § 270.2 for more discussion of

how a State qualifies for the Contingency Fund.

Pub. L. 105–33 gave us the added discretion to reduce the penalty if the State failed to meet the participation rate due to extraordinary circumstances such as a natural disaster or regional recession. To ensure that we take any such circumstances into consideration, States should submit information describing the circumstances and their effects on the ability of the State to meet the participation rates. We must provide a written report to Congress to justify any penalty reductions we provide States on this basis.

Readers will note the similarity between this criterion for reducing the amount of the penalty and the criterion at § 272.5(a)(1) for granting a reasonable cause exception to a penalty due to a natural disaster. We will evaluate any information a State submits concerning the effects of a natural disaster on its ability to achieve the participation rates. If the material does not support granting a reasonable cause exception, we will consider whether it is appropriate to reduce the penalty. For example, if the disaster caused a failure in only one area of the State, we might reduce the penalty in proportion to the TANF caseload in that area. We intend to use a similar approach to evaluating the effects of a regional recession.

Finally, this section of the proposed regulation indicates that States may dispute our findings that they are subject to a penalty.

Is there a way to waive the State's penalty for failing to achieve either of the participation rates? (§ 271.52)

Section 409(b) creates a reasonable cause exception to the requirement for certain penalties, including failure to meet the minimum participation rates. If we determine that a State has reasonable cause for failing to meet one of the rates, we cannot impose a penalty.

We have included general reasonable cause criteria at § 272.5, which may apply to any of the penalties for which there are reasonable cause exceptions. The preamble to § 272.5 discusses how we arrived at these criteria as well as our general thinking about the reasonable cause exception. For the work participation rate penalty, two additional, specific reasonable cause exceptions apply. Under the proposed rule at § 271.52, a State may demonstrate that its failure can be attributed to its granting of good cause domestic violence waivers under the Family Violence Option. In this case, the State must show that it would have achieved the required work rates if cases with good cause waivers were removed from both parts of the calculation (i.e., from the numerators described in §§ 271.22(b)(1) and 271.24(b)(1) and the denominators described in §§ 271.22(b)(2) and 271.24(b)(2)). A State must grant the good cause domestic violence waivers in accordance with criteria in the regulation to be eligible to receive a reasonable cause exemption on these grounds.

The regulation also provides that a State may receive a good cause exemption if it demonstrates that its failure to achieve the work participation rates can be attributed to the provision of assistance to refugees in federally-approved alternative project.

In either of these two situations, as well as in the general reasonable cause criteria, a State must demonstrate that it did not divert cases to a separate State program for the purpose of avoiding the work participation rates before we will grant a reasonable cause exemption.

Can a State correct the problem before incurring a penalty? (§ 271.53)

The process for developing a corrective compliance plan does not differ from one penalty to the next, although the content of the plan naturally would. Thus, the proposed regulation refers to § 272.6, the general section on submittal of a corrective compliance plan for any penalty.

However, in this section, we establish a specific threshold that States must achieve in order to be considered for a reduced work penalty under § 272.6(i)(1). More specifically, we indicate that the State must increase its participation rate during the compliance period enough to reduce the difference between the participation rate it achieved in the year for which it is subject to a penalty and the minimum participation rate it must achieve in the year of the corrective compliance plan by 50 percent. (In other words, if you divided the difference between the rate achieved during the compliance period and the rate achieved during the penalty year by the difference between the target rate during the compliance period and the rate achieved during the penalty year, the result must be 0.50 or greater.)

We believe that showing more progress than not indicates significant compliance. Thus, if the State achieves this amount of progress towards coming into compliance, we may reduce its work penalty under the corrective compliance provision.

This proposal is similar in approach to the approach taken in § 271.51, with respect to potential reductions in work penalties based on degree of noncompliance. In both cases, we are expecting a State to come into significant compliance in order to get a reduced penalty.

Is a State subject to any other penalty relating to its work program? (§ 271.54)

In accordance with section 409(a)(14), as amended by Pub. L. 105–33, if we determine that a State has violated 407(e) of the Act in a fiscal year, which relates to when a State must impose penalties on individuals who refuse to engage in required work, we must reduce the SFAG payable for the following fiscal year by between one and five percent of the adjusted SFAG.

We propose to require each State to provide us with a description of how it will carry out a pro reduction for individuals under both TANF and separate State programs. This requirement appears in the data collection requirements at § 275.9. This data collection will help us determine whether this is in fact a serious problem; to the extent possible, we want to ensure an equitable and level playing field for the States.

Under what circumstances will we reduce the amount of the penalty for not properly imposing penalties on individuals? (§ 271.55)

The statute requires us to reduce the amount of the penalty based on the degree to which the State is not in compliance with the section 407(e) of the Act.

In determining the size of any reduction, we propose to consider two factors. First, we will examine whether the State has established a control mechanism to ensure that the grants of individuals are reduced for refusing to engage in required work. Second, we will consider the percentage of grants that the State has failed to reduce in accordance with the statute. We are particularly interested in any comments readers have concerning what criteria to use in this area. We would like readers' views on the proposal to link the penalty amount to the percentage of cases for which grants have not been appropriately reduced.

Subpart F—Waivers

How do existing welfare waivers affect the participation rate? (§ 271.60)

Section 415 permits a State to continue operating any welfare reform demonstration waiver (i.e., section 1115 waiver) affecting work activities granted prior to the date of enactment of PRWORA, to the extent that PRWORA is inconsistent with the waiver.

In considering how this provision affects the work rules applicable in a State, we wanted to draft a regulation

that would balance the legislative emphasis on helping recipients find work quickly with the intent to allow States to continue reform activities they had already undertaken. Under prior law, this Administration encouraged States to use the waiver mechanism to its fullest capacity and to act as the ''laboratories of change'' for the nation. Our intent is to help States capitalize on the promising initiatives they began under those waivers, but in a way that is consistent with the overall purpose of PRWORA. We are also cognizant of the importance Congress placed on ensuring that States are accountable for promoting work.

The proposed regulation requires a waiver to meet the definition included in § 270.30. This definition allows a State the flexibility to include applicable provisions of prior law, but only if their inclusion were necessary to achieve the objective of the approved waiver. For example, a State might have had a waiver requiring single parents with children under one year of age and pregnant recipients to participate in JOBS, while maintaining the JOBS exemptions for the disabled and the elderly. In this example, the objective of the waiver, as reflected in the application and terms and conditions, was to expand the group of recipients who were required to participate in work activities. Maintaining the other statutory exemptions would not be necessary to achieve this objective and, in fact, would be inconsistent with the fundamental purpose of the waiver. Therefore, the prior law exemptions would not be included as part of the waiver; the waiver would include only the expanded participation requirements for single parents of young children and pregnant recipients. Moreover, because those two groups can also be required to participate under TANF, there is no inconsistency. Thus, in this example, the prior law exemptions would not be included in the waiver, and the waiver itself would not be inconsistent with TANF.

The proposed definition recognizes two kinds of waiver inconsistencies with respect to the work requirements. The first is in the area of what activities a State may count toward the participation rate. As part of the waiver demonstrations, a number of States expanded the JOBS work activities. Those States believed that a broader range of activities would be most effective in helping the recipients in their States find and retain work and achieve self-sufficiency. In creating this package of activities, States generally kept some of the prior law activities, changed others, and added new ones. While only the changed and new activities required waivers, we would include the prior law activities under the waiver because they are necessary for the State to carry out the objectives of the approved waiver. Some of these activities are inconsistent with the definition of work activities in section 407(d), so States could use the activities defined under the waivers instead of the TANF list of work activities. Thus, States could count participation in a broader range of activities as participation in work.

The other area in which the proposed definition recognizes waiver inconsistencies relates to hours of participation. In approving waivers of required hours of participation, we allowed States to implement two kinds of policies.

First, States expanded the number of required hours of participation for a class or classes of recipients. Because those classes of recipients are already required to participate for a greater number of hours under TANF than under prior law, there is no inconsistency. Those waivers would not continue under this proposed regulation.

Second, we approved waivers that allowed a State to set the number of hours an individual must participate in accordance with an individualized plan for achieving self-sufficiency. This gave States additional freedom to tailor work requirements to the circumstances of the individual. For example, some States removed the JOBS exemption for the disabled. The intent of such a waiver was to find an appropriate level of participation based on the particular circumstances and abilities of the individual. Because continuing these policies could be inconsistent with TANF, due to requiring a lesser number of hours of participation than TANF, we will recognize such waivers as allowable inconsistencies.

The definition does not recognize prior law exemptions from the denominators of the participation rates as part of the waiver, except for research group cases. We believe this is appropriate for two reasons. First, although we have allowed new or modified activities to count for participation, we have never granted a waiver of a participation rate itself. Second, we have never granted a waiver that added new exemptions from the work requirements, which would have reduced the number of recipients counted in the denominator. We think that States need to try to provide work-related services for the entire caseload, because almost all families will be facing the time limit on benefits. By not adjusting the number of families who would otherwise be counted in the denominators, States have a greater incentive to provide work-related services for everyone.

Finally, we would like to explain the policy in the proposed regulations with respect to control and experimental treatment groups. As part of the demonstrations, States divided the AFDC population in the demonstration into three groups. The first, the control group, received benefits under the regular, statutory AFDC program. The second, the experimental treatment group, received benefits under AFDC with the demonstration changes and is used to evaluate the impacts of the new program. The third, the non-experimental treatment group, also received benefits under AFDC with the demonstration changes, but is not used to evaluate the impacts of the new program. The control and experimental treatment groups together comprise the research group and contain a fairly small number of the AFDC recipients. Except in States with small caseloads, the research group represents a very small proportion of the welfare caseload. The non-experimental treatment group includes the vast majority of the welfare population.

Information on the research group is the sole basis for impact and cost-benefit analyses of the effects of the demonstration provisions and is essential to all the major components of the evaluation. Because evaluation is one of the goals of the demonstration, and the maintenance of different requirements for the three groups of recipients is necessary to avoid compromising the evaluation, we believe all of the underlying law for the research group continues to apply in those States continuing demonstration evaluations and is uniquely necessary to achieve that evaluation goal. Thus, the research group—both the control and experimental treatment groups—should not be included in either the numerator or the denominator of the participation rates.

Subpart G—Non-displacement

What safeguards are there to ensure that participants in work activities do not displace other workers? (§ 271.70)

The proposed regulations incorporate the statutory prohibition against allowing an individual participating in TANF work activities from displacing another employee. A participant in a work activity may not fill a vacancy that exists because another individual is on layoff from the same or equivalent job. Also, a participant may not fill a

vacancy created by an involuntary reduction in work force or by the termination of another employee for the purpose of filling a vacancy with a participant.

We encourage States to take aggressive steps to ensure that the current work force is not harmed or their employment jeopardized in any way by a State's efforts to place welfare recipients in employment or work-related positions. Our ultimate goal, and that of States, is to increase the ranks of the employed, not to substitute one group of job-seekers for another. Displacing current workers is counter-productive and damages the overall stability of the labor force. We are confident that States will develop procedures for working with employers to protect against displacing other employees.

C. Part 272—Accountability Provisions—General

It is clear that, in enacting the penalties at section 409(a), Congress intended for State flexibility to be balanced with State accountability. To assure that States fulfilled their new responsibilities under the TANF program, Congress established a number of penalties and requirements under section 409(a). The penalty areas indicate the areas of State performance that Congress found most significant and for which it gave us clear enforcement authority.

What definitions apply to this part? (§ 272.0)

This section cross-references the general TANF regulatory definitions established under part 270.

What penalties will apply to States? (§ 272.1)

Section 409 includes 15 penalties that may be imposed on States. This proposed rule covers 14 of the 15. We have not included the specific penalty dealing with substantial noncompliance with requirements under title IV–D (section 409(a)(8)) in this proposed rule. Our Office of Child Support Enforcement will address this penalty in a separate proposed rule to be published at a future time.

The penalties for which we are proposing regulations are:

(1) a penalty for using the grant in violation of title IV–A of the Act, as determined by findings from a single State audit and equal to the amount of the misused funds;

(2) a penalty of five percent of the adjusted SFAG, based on audit findings that show that a State intentionally violated a provision of the Act;

(3) a penalty of four percent of the adjusted SFAG for the failure to submit an accurate, complete and timely required report;

(4) a penalty of up to 21 percent of the adjusted SFAG for the failure to satisfy the minimum participation rates;

(5) a penalty of no more than two percent of the adjusted SFAG for the failure to participate in the Income and Eligibility Verification System (IEVS);

(6) a penalty of no more than five percent of the adjusted SFAG for the failure to enforce penalties on recipients who are not cooperating with the State Child Support Enforcement Agency;

(7) a penalty equal to the outstanding loan amount plus interest for the failure to repay a Federal loan provided for under section 406;

(8) a penalty equal to the amount by which qualified State expenditures fail to meet the appropriate level of historic effort in the operation of the TANF program;

(9) a penalty of five percent of the adjusted SFAG for the failure to comply with the five-year limit on Federal funding of assistance;

(10) a penalty equal to the amount of contingency funds unremitted by a State for a fiscal year;

(11) a penalty of no more than five percent of the adjusted SFAG for the failure to maintain assistance to an adult single custodial parent who cannot obtain child care for a child under age six;

(12) a penalty of no more than two percent of the adjusted SFAG plus the amount a State has failed to expend of its own funds to replace the reduction to its SFAG due to the assessment of penalties in § 272.1 in the year of the reduction;

(13) a penalty equal to the amount of the State's Welfare-to-Work formula grant for failure to maintain the historic effort during a year in which this formula grant is received; and

(14) a penalty of not less than one percent and not more than five percent of the adjusted SFAG for failure to reduce assistance for recipients refusing without good cause to work.

In calculating the amount of the penalty, we will take into consideration the extent to which a State's SFAG has been reduced to fund Tribal TANF grants. This is particularly applicable for penalties based on percentage reductions. These regulations use the term ''adjusted SFAG'' to refer to States whose SFAG allocations are reduced for this purpose. For States without Tribal grantees, ''adjusted SFAG'' will be the same as SFAG.

Except for the penalty at § 272.1(a)(12), all penalties are either a percentage of the adjusted SFAG or a fixed amount. In calculating the amount of these penalties, we will add all applicable penalty percentages together, and we will apply the total percentage reduction to the amount of the adjusted SFAG that would have been payable if no penalties were assessed against the State. As a final step, we will subtract other (fixed) penalty amounts.

The penalty at § 272.1(a)(12) requires that we reduce a State's adjusted SFAG if, after one of the penalties under this section has been taken, a State does not expend its own funds on the State's TANF program in the amount of the penalty, i.e., the amount by which the adjusted SFAG is reduced. Unlike the other penalties, this penalty represents a percentage of the adjusted SFAG (up to two percent) and a fixed amount, i.e., the amount of the reduction a State has failed to expend under the TANF program with its own funds. We believe it is appropriate to calculate the amount of this penalty by including the amount of the penalty based on a percentage with other applicable penalty percentages. The fixed amount of this penalty will be subtracted with other fixed-amount penalties. Then we will add the amount based on the percentage for this penalty and the fixed amount for this penalty to determine the cumulative amount of this penalty.

The total reduction in a State's grant must not exceed 25 percent. If the 25 percent limit prevents the recovery of the full penalty imposed on a State during a fiscal year, we will apply the remaining amount of the penalty to the SFAG payable for the immediately succeeding fiscal year. If it is not possible to take the full penalty in the next succeeding year, we will defer taking the penalty to subsequent years until it is finally taken in full.

When do the TANF penalty provisions apply? (§ 272.2)

States may implement the TANF program at different times, but no later than July 1, 1997. The Territories, i.e., Guam, the Virgin Islands, Puerto Rico, and American Samoa, may not implement until July 1, 1997.

Congress recognized that, in certain circumstances, States should face the consequences for failing to meet the requirements of the penalty provisions from the first day the State operates the TANF program. It also recognized, however, that States needed some lead time in implementing other TANF requirements.

Section 116(a)(2) of PRWORA delays the effective date of some of the penalty provisions in title IV–A. For those provisions where the effective date is

not delayed, we believe that Congress intended that a State would be subject to these penalties from the first day it began to operate TANF.

Before we issue final rules, States must implement the TANF provisions in accordance with their own reasonable interpretation of the statute. If we find that a State's actions are inconsistent with the final regulations, but consistent with a reasonable interpretation of the statute, we will not impose a penalty. However, if we find that a State has operated its TANF program in a manner that is not based on a reasonable interpretation of the statute, we may penalize the State.

How will we determine if a State is subject to a penalty? (§ 272.3)

We have concluded that no one method can be used for monitoring State performance. The following discussion explains the different methods we will use to determine State compliance with the requirements with which noncompliance may lead to penalties.

Using the Single Audit to Determine Misuse of Funds and the Applicability of Certain Other Penalties

We will determine whether a State has used funds under section 403 in violation of title IV–A through an audit conducted under the Single Audit Act. (See § 273.10 on Misuse of Funds.) This is the only penalty for which Congress identified a method for determining a penalty.

Under the requirements of the Single Audit Act, States operating Federal grant programs meeting a monetary threshold (currently $100,000, but soon to be $300,000) must conduct an audit under the Act. Most States must audit annually; a few may audit biennially. Because of the substantial funding under TANF, all TANF States meet the audit threshold.

The single audit is an organization-wide audit that reviews State performance in many program areas. We will implement the Single Audit Act through use of Office of Management and Budget (OMB) Circular A–133, ''Audits of States, Local Governments, and Non-Profit Organizations.'' OMB recently revised the Circular, merging former Circulars A–128 and A–133, because of amendments to the Act in 1996. The new Circular was published in the **Federal Register** on June 30, 1997, at 62 FR 35277.

In conducting their audits, auditors use a variety of tools, including the statute and regulations for each program and a compliance supplement issued by OMB that focuses on certain areas of primary concern to that program. Upon issuance of final regulations, we will prepare a TANF program compliance supplement, for OMB to issue, which will focus on those penalties for which the single audit will be our primary compliance instrument.

The Single Audit Act does not preclude us or other Federal offices or agencies, such as the Office of the Inspector General (OIG), from conducting additional audits or reviews. In fact, there is specific authority to conduct such additional audits or reviews. In particular, 31 U.S.C. 7503(b) states:

> (b) Notwithstanding subsection (a), a Federal agency may conduct, or arrange for additional audits that are necessary to carry out its responsibilities under Federal law or regulation. The provisions of this chapter do not authorize any non-Federal entity (or sub-recipient thereof) to constrain, in any manner, such agency from carrying out or arranging for such additional audits, except that the Federal agency shall plan such audits to not be duplicative of audits of Federal awards.

States should note, therefore, that the State-conducted single audit will be our primary means for determining if a State has misused funds. We may, however, through our own audits and reviews, or through OIG and its contractors, conduct audits or reviews of the TANF program that will not be duplicative of single organization-wide audit activities. We may identify a need to conduct such audits as the result of complaints from individuals and organizations, requests by the Congress to review particular areas of interest, or other indications of problems in State compliance with TANF program requirements.

We are proposing that the single audit be the primary means for determining certain other penalties as well.

Where we determine that a State is subject to a penalty for the misuse of funds, we may apply a second penalty if we determine that the State intentionally misused Federal TANF funds. The criteria for determining ''intentional misuse'' are found at § 273.12. The single audit will be the primary vehicle for this penalty because of its link to the determination of misuse of funds.

The single audit will also be the primary means that we use to determine State compliance with the following three penalties: (1) failure to participate in the Income and Eligibility Verification System (see § 274.11); (2) failure to comply with paternity establishment and child support enforcement requirements under title IV–D of the Act (see § 274.31); and (3) failure to maintain assistance to an adult single custodial parent who cannot obtain child care for a child under age six (see § 274.20). For these process-focused penalties, we determined that we could make appropriate use of the single audit to monitor State compliance.

The audit compliance supplement will include guidance to auditors on how to monitor these areas. As in the case of the misuse-of-funds penalty, we may conduct other reviews and audits, if necessary. For example, the penalty for a State's failure to maintain assistance to an adult single custodial parent who cannot obtain child care is an area where we anticipate that we could receive complaints from individuals and organizations. A number of substantiated complaints may indicate that an additional review may be warranted.

Use of Data Collection and Reporting for Determining Applicability of Certain Penalties

We will monitor State compliance with the penalties for failure to satisfy minimum participation rates (see § 271.21) and failure to comply with the five-year limit on Federal assistance primarily through the information required to be reported by section 411(a) (i.e., State reporting of disaggregate case record information). (See part 275 of the proposed rule for the proposed data collection and reporting requirements.)

We believe that Congress intended that the data elements in section 411(a) be used to gather information for these two penalty areas. Thus, we concluded that the section 411(a) data collection tools would be our primary means for determining these penalties. We may also need to conduct reviews in the future to verify the data submitted by States, particularly in these two areas where a fiscal penalty is applicable. States should maintain records to adequately support any report in accordance with 45 CFR 92.42. States may not revise the sampling frames or program designations for cases in the quarterly TANF and TANF MOE Data Reports retroactively (i.e., after submission).

Accurate data are essential if we are to apply penalties fairly. If the State submits insufficient data to verify its compliance with the requirements, or if we determine that a State can not adequately document data it has submitted showing that it has met its participation rates or the five-year time limit, we will enforce the participation rate penalty or five-year time limit penalty.

In our consultations, some participants recommended that the

single audit be the means for determining all the penalties. However, since States must otherwise report the data that directly speak to their compliance in these two areas, and timely determination of State compliance is necessary, we did not accept that recommendation and have proposed to rely on the quarterly reports required under part 275 of the proposed rule.

TANF MOE and Contingency Fund MOE Penalties, and Failure to Replace Grant Reductions Penalty

All States are subject to the TANF MOE penalty for failure to maintain a certain level (i.e., 75 or 80 percent) of historic effort. Those States that choose to receive contingency funds under section 403(b) are subject to a separate maintenance-of-effort penalty for failure to maintain 100 percent of historic effort.

We have developed a proposed TANF Financial Report (see Appendix D of part 275). We designed this report to gather information required under sections 403(b)(4), 405(c)(1), 409(a)(1), 409(a)(7), 411(a)(2), 411(a)(3), 411(a)(5), including data on administrative costs, types of State expenditures, and transitional services for families no longer receiving assistance. It will also gather financial information to enable us to award grant funds, close out accounts, and manage other financial aspects of the TANF program. In addition, we will be using this report to monitor State compliance with the TANF and Contingency Fund MOE requirements and to aid us in determining if Federal TANF funds have been used properly.

Consistent with section 5506(a) of Pub. L. 105–33, the TANF Financial Report is due 45 days after the end of each quarter. Upon receipt of the report for the fourth quarter, i.e., by November 14, we will have State-reported information indicating whether or not the State met its MOE requirements.

On the TANF Financial Report, States will inform us of the amount of expenditures they have made for TANF and Contingency Fund MOE purposes. For the TANF MOE, States must inform us of the amount of expenditures made in the State TANF program and in separate State programs. (See part 274, subpart B, for more information on the Contingency Fund MOE requirement.)

For the TANF MOE, we are proposing to require a supplemental report that must accompany the fourth quarter TANF Financial Report. The supplemental report (or addendum) will include a description of the TANF MOE expenditures that States have made under separate programs, i.e., not as part of their State TANF programs. (See §§ 273.7 and 275.9(a) for more information on the contents of this supplemental report.)

If we reduce a State's SFAG as the result of a penalty, the State is required to expend an equal amount of its own funds for the fiscal year in which the reduction is made. If the State fails to replace the funds through these State-only expenditures, as required, the State is subject to the penalty at § 272.(1)(a)(12), i.e., an amount of up to two percent of the adjusted SFAG and the amount not expended to replace the reduction to the SFAG due to the penalty.

We will use the TANF Financial Report (or Territorial Financial Report) to determine if a State has complied with these provisions. Instructions to the TANF Financial Report in Appendix D require States to include amounts that they are required to contribute as a result of a penalties taken against the State. (A similar requirement will be included in the Territorial Financial Report.)

As in the case of the penalties for failure to meet the participation rates or comply with the five-year limit on assistance, our program management responsibilities may require us to verify the data submitted by States on the TANF Financial Report, particularly data on MOE expenditures and ''replacement funds.'' States should maintain records in accordance with 45 CFR 92.42. As we have stated, accurate data are essential if we are to determine State compliance. If the State submits insufficient MOE data to verify its compliance or if we determine that the State can not adequately document data it has submitted showing that it has met its MOE requirements, we will apply the penalties for failure to meet the TANF and Contingency Fund MOE requirements. For the TANF MOE, we may have to estimate the actual level of qualifying MOE expenditures. We would then base the amount of the penalty on the degree to which we believe the data are inaccurate.

Federal Loan Repayment

We will penalize States for failing to repay a loan provided under section 406 (see § 274.40). A specific vehicle for determining a State's compliance with this requirements is unnecessary. In our loan agreements with States, we will specify due dates for the repayment of the loans and will know if payments are not made.

Penalty for Reporting Late

We will penalize States for failing to submit a report required under section 411(a) by the established due dates (see §§ 275.4 and 275.7). As noted before, we are requiring that the reports must not only be timely, but they must also be complete and accurate. Thus, we may take actions to review the accuracy of data reporting if appropriate. If we determine that the data required under section 411(a) are incomplete or inaccurate, we may apply the penalty for failing to submit a report. As discussed above, if the data that are inaccurate or incomplete pertain to other penalties (i.e., the participation rate, the five-year time limit on assistance, or the TANF MOE and Contingency Fund MOE requirements), we will apply the penalties associated with these requirements.

Additional Single Audit Discussion

Although we are proposing that the single audit be the primary means to determine certain specific penalties, if a single audit detects the lack of State compliance in other penalty areas, e.g., the five-year limit on Federal assistance, we cannot ignore those findings. Therefore, we will also impose a penalty based on the single audit findings in such other penalty areas.

For most programs, other than TANF, the Single Audit Act procedures provide for disallowance in cases of substantiated monetary findings. However, in accordance with section 409(a), we will be taking penalties, rather than disallowances, under TANF. When the single audit determines a specific penalty, the penalty amount that we will apply is the penalty amount associated with the specific penalty provision or provisions, for example, misuse of funds and failure to end federal assistance after 60 months of receipt. Likewise, where we, or OIG, conduct an audit or review, the penalty amount that will apply is the penalty amount associated with the specific penalty or penalties under section 409.

Regardless of how we determine that a State is subject to a penalty, the determination of whether a State may invoke the reasonable cause exception or enter into a corrective compliance plan depends on the specific penalty provision. States cannot avoid all penalties through the reasonable cause exception or a corrective compliance plan (see § 272.4).

What happens if we determine that a State is subject to a penalty? (§ 272.4)

Notification to the State

If we determine that a State is subject to a penalty, we will send the State a notice that it has failed to meet a requirement under section 409(a). This notice will: (1) specify the penalty provision at issue, including the applicable penalty amount; (2) specify the source and reasons for our decision; (3) explain how and when the State may submit a reasonable cause justification under 409(b) and/or corrective compliance plan under 409(c); and (4) invite the State to present its arguments if it believes that the data or method we used were in error or were insufficient, or that its actions, in the absence of Federal regulations, were based on a reasonable interpretation of the statute.

Process When Both Reasonable Cause and Corrective Compliance Plan Provisions Apply

For penalties where the reasonable cause and the corrective compliance plan provisions both apply, we are proposing that a State submit to us both its justification for reasonable cause and corrective compliance plan within 60 days of receipt of our notice of failure to comply with a requirement. The objective of this proposal is to expedite the resolution of State failure to meet a requirement.

A State may choose to submit a reasonable cause justification without a corrective compliance plan. In this case, we will notify the State if we do not accept the State's justification of reasonable cause. Our notification will also inform the State that it has an opportunity to submit a corrective compliance plan. The State will then have 60 days from the date it receives the notification to submit a corrective compliance plan. (Under this scenario, we will send the State two notices—the first will inform the State that it may be subject to a penalty, and the second will inform the State that we determined that it did not have reasonable cause.)

A State may also choose to submit only a corrective compliance plan if it believes that the reasonable cause factors do not apply in a particular case.

Process When the Reasonable Cause and/or Corrective Compliance Plan Provisions Do Not Apply

The reasonable cause and corrective compliance plan provisions in the statute do not apply to five penalties:

(1) failure to repay a Federal loan on a timely basis; (2) failure to maintain the applicable percentage of historic State expenditures for the TANF MOE requirement; (3) failure to maintain 100 percent of historic State expenditures for States receiving Contingency Funds; (4) failure to expend additional state funds to replace grant reductions due to the imposition of one or more penalties listed in § 272.1; and (5) failure to maintain 80, or 75 percent, as appropriate, of historic State expenditures during a year in which a Welfare-to-Work grant is received.

Due Dates

States must postmark their responses to our notification within 60 days of their receipt of our notification.

If, upon review of the State's submittal(s), we find that we need additional information, the State must provide the information within two weeks of the date of our request. This is to make sure we are able to respond timely.

Under what general circumstances will we determine that a State has reasonable cause? (§ 272.5)

Two provisions in section 409, the reasonable cause and corrective compliance provisions, could result in our decision to excuse or reduce a penalty. After reviewing these provisions, we decided that we should not consider the reasonable cause exception in isolation. Rather, we view it in conjunction with the provision for developing corrective compliance plans. In drafting this proposed regulation, we have acknowledged the new Federal and State roles under TANF and worked to minimize adversarial Federal-State issues. Our primary task is to help each State operate the most effective program it can to meet the needs of its caseload and the goals of the law. Through these rules, we hope to focus States on positive steps that they should take to correct situations that resulted in a determination that they are subject to a penalty rather than let them simply avoid the penalty. As such, we consider it more appropriate to emphasize the use of the corrective compliance plan process over the reasonable cause exception. Consequently, we have drafted a more limited list of reasonable cause criteria than some suggested during our consultations.

PRWORA did not specify any definition of reasonable cause or indicate what factors we should use in deciding whether to grant a reasonable cause exception for a penalty. During our deliberations on reasonable cause factors, we considered the diverse opinions expressed during our consultation process, as well as the need to support the commitment of Congress, the Administration, and States to the work and other objectives of the TANF program. In keeping with these objectives, we are proposing a limited number of reasonable cause factors for circumstances that are beyond a State's control, and placing a greater emphasis on corrective solutions for those circumstances a State can control. We strongly believe that States must correct problems that detract from moving families from welfare to self-sufficiency.

In the discussion that follows, we will describe: (1) the factors that we will consider in deciding whether or not to excuse a penalty based on a State's claim of reasonable cause; (2) the contents of an acceptable corrective compliance plan; and (3) the process for applying these provisions. Our proposal attempts to treat these two provisions as part of an integrated process.

We are proposing factors that would be applicable to all penalties for which the reasonable cause provision applies. We generally limit reasonable cause to the following: (1) natural disasters and other calamities (e.g., hurricanes, tornadoes, earthquakes, fires, floods, etc.) whose disruptive impact was so significant as to cause the State's failure to meet a requirement; (2) formally issued Federal guidance that provided incorrect information resulting in the State's failure; and (3) isolated, non-recurring problems of minimal impact that are not indicative of a systemic problem (e.g., although a State's policies and procedures, including a computerized kick-out system, require that Federal TANF assistance be time-limited to five years, ten families somehow slip through and receive assistance for longer than five years).

We are also proposing a separate factor that would apply in cases when the State fails to satisfy the minimum participation rates, and another specific factor that would apply to cases when the State fails to meet the five-year limit. We discuss specific factors in our preamble discussion of §§ 271.52 and 274.3.

We will not grant a State reasonable cause to avoid the time-limit penalty or any of the three penalties related to work if we detect a significant pattern of diversion of families to separate State programs that achieves the effect of avoiding the work participation rates. As we indicated in program announcement TANF–ACF–PA–97–1, we do not believe Congress intended a State to use separate State welfare programs to avoid TANF's focus on work.

Likewise, as discussed previously, we will not grant a State reasonable cause to avoid the penalty on work participation, failure to enforce child

support cooperation, time limits or failure to impose work sanctions if we detect a significant pattern of diversion of families to separate State programs that has the effect of diverting the Federal share of child support collections.

In determining reasonable cause, we will consider the efforts the State made to meet the requirement. We will also take into consideration the duration and severity of the circumstances that led to the State's failure to achieve the requirement.

The burden of proof rests with the State to explain fully what circumstances, events, or other occurrences constitute reasonable cause with reference to its failure to meet a particular requirement. The State must provide us with sufficient relevant information and documentation to substantiate its claim of reasonable cause. If we find that the State has reasonable cause, we will not impose the penalty.

What if a State does not demonstrate reasonable cause? (§ 272.6)

As noted, section 409(c), as amended by section 5506 of Pub. L. 105–33, provides that, prior to imposing a penalty against a State, we will notify the State of the violation and allow the State the opportunity to enter into a corrective compliance plan. The State will have 60 days from the date it receives our notice of a violation to submit a corrective compliance plan if it does not claim reasonable cause or if it claims reasonable cause simultaneously with its corrective compliance plan. If, in response to our notice of a violation, the State initially submits only a claim of reasonable cause, and if we deny this claim, the State has 60 days from the date it receives our (second) notice denying the claim to submit a corrective compliance plan. If an acceptable corrective compliance plan is not submitted on time, we will assess the penalty immediately. Outside of the notice(s) we will not remind the State that the corrective compliance plan is due.

The corrective compliance plan must identify the milestones, including interim process and outcome goals, the State will achieve to assure that it will fully correct or discontinue the violation within the time period specified in the plan. In order to highlight the importance of the plan, it must also include a certification by the Governor that the State is committed to correcting or discontinuing the violation in accordance with the plan.

We recognize that each plan will be specific to the violation (or penalty) and that each State operates its TANF program in a unique manner. Thus, we will review each plan on a case-by-case basis. Our determination to accept a plan will be guided by the extent to which the State's plan indicates that it will completely correct or discontinue, as appropriate, the situation leading to the penalty.

The steps a State takes to correct or discontinue a violation may vary. For example, where a State is penalized for misusing Federal TANF funds, we will expect it to remove this expenditure from its TANF accounting records (charging it to State funds, as allowable) and provide steps to assure that such a problem does not recur. Where a State has reduced or denied assistance improperly to a single custodial parent who could not find child care for a child under six, correcting the violation may require that the State reimburse a parent retroactively for the assistance that was improperly denied. The State's corrective compliance plan would also have to describe the steps to be taken to prevent such problems in the future.

Section 409(c)(3) requires that a violation be corrected or discontinued, as appropriate, ''in a timely manner.'' A State's timely correction of the problem or discontinuance of an improper action is critical to assure that the State is not subject to a subsequent penalty. At the same time, we recognize that the causes of violations will vary and we cannot expect all violations to be rectified in the same time frame. Thus, we do not want to unduly restrict the duration of corrective compliance plans. At the same time, we do not want to allow States to prolong the corrective compliance process indefinitely and leave problems unresolved into another fiscal year. Therefore, we are proposing that the period covered by a corrective compliance plan end no later than six months after the date we accept a State's corrective compliance plan.

We believe that, for most violations, States will have some prior indication that a problem exists and will be able to begin addressing its problems during the period before the deadline for submitting its corrective compliance plan. Therefore, we think it fair that the corrective compliance plan period extend no more than six months from the date when we accept the State's plan; this period should provide the State sufficient time in which to correct or discontinue violations.

We would like to hear comments from States and other interested parties on this proposal to restrict the time period for a corrective compliance plan. We will consider all comments and suggestions we receive on this matter.

Corrective Compliance Plan Review

We propose to consult with States on any modifications to the corrective compliance plan and seek mutual agreement on a final plan. Such consultation will occur only during the 60-day period specified in the law. Any modifications to the State's corrective compliance plan resulting from such consultation will constitute the State's final corrective compliance plan and will obligate the State to take such corrective actions as specified in the plan.

We may either accept or reject the State's corrective compliance plan within the 60-day period that begins on the date that we receive the plan. If a State does not agree to modify its plan as we recommend, we may reject the plan. If we reject the plan, we will immediately notify the State that the penalty is imposed. The State may appeal our decision to impose the penalty in accordance with the provisions of section 410 of the Act and the proposed regulations at § 272.7. If we have not taken an action to reject a plan by the end of the 60-day period, the plan is accepted, as required by section 409(c)(1)(D).

If a State corrects or discontinues, as appropriate, the violations in accordance with its corrective compliance plan, we will not impose the penalty. The statute permits us to collect some or all of the penalty if the State has failed to correct or discontinue the violation. Therefore, under limited circumstances, we may reduce the amount of the penalty if the violation has not been fully rectified, based on one or more of the following situations: (1) the State made substantial progress in correcting or discontinuing the violation; or (2) a natural disaster or regional recession prevented the State from coming into full compliance.

As discussed previously, we are proposing that, for certain penalties, we would not grant a State a reduced penalty through corrective compliance if we detect a significant pattern of diversion of cases to separate State programs that result in avoidance of the work requirements or diversion of the Federal share of child support collections unless the State discontinues the diversion during the corrective compliance period. A State wishing to receive one of these reductions should address its plans to discontinue the diversion during the corrective compliance period and provide evidence of the discontinuation.

How can a State appeal our decision to take a penalty? (§ 272.7)

Once we make a final decision to impose a full or partial penalty, we will notify the State that we will reduce the State's SFAG payable for the quarter or the fiscal year and inform the State of its right to appeal to the Departmental Appeals Board (the Board).

Section 410 provides that the Secretary will notify the chief executive officer of the State of the adverse action within five days. This provision covers any adverse actions with respect to the State TANF plan or the imposition of a penalty under section 409.

Within 60 days after the date a State receives this notice, the State may file an appeal of the action, in whole or in part, to the Board. As Congress only allowed 60 days for the Board to reach a decision following the appeal, it is evident they intended a very streamlined procedure. Therefore, the State's appeal must include all briefs and supporting documentation for its case when it files its appeal. A copy of the appeal should be sent to the Office of the General Counsel, Children, Families and Aging Division, Room 411–D, 200 Independence Avenue, S.W., Washington, D.C. 20201. ACF must file its reply brief and supporting documentation within 30 days after a State files its appeal. Further briefing and argument will be at the discretion of the Board. A State's appeal to the Board will also be subject to the following regulations at part 16 of title 45: §§ 16.2, 16.9, 16.10, and 16.13–16.22.

Section 410(b)(2) provides that the Board will consider an appeal on the basis of documentation the State submits, along with any additional information required by the Board to support a final decision. In deciding whether to uphold an adverse action or any portion of such action, the Board will conduct a thorough review of the issues and make a final determination within 60 days after the appeal is filed. The filing date will be the date that materials are received by the Board in a form acceptable to it. The 60 days may be tolled by the Board, for a reasonable period, if it determines it needs additional documentation to reach a decision.

Finally, a State may obtain judicial review of a final decision by the Board by filing an action within 90 days after the date of the final decision. States may file either with the district court of the United States in the judicial district where the State Agency is located or in the United States District Court for the District of Columbia. The district courts will review the final decision of the Board on the record established in the administrative proceeding, to determine if it is arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law, or unsupported by substantial evidence. The court's review will be on the basis of the documents and supporting data submitted to the Board.

What is the relationship of continuing waivers on the penalty process for work participation and time limits? (§ 272.8)

States that, in accordance with section 415 of the Act, continue waivers may operate under a different set of requirements in determining the calculation of work participation rates and/or applicability of time limits. Providing this flexibility is an important aspect of encouraging States who have been innovative in implementing welfare reform to continue those endeavors and test their results. However, this flexibility must also be balanced with accountability to the purposes of TANF, particularly those of encouraging work and focusing TANF on the provision of temporary support to families as they move to self-sufficiency. To address this balance, we will: (1) require Governors to certify waiver inconsistencies a State believes apply; (2) treat a State's failure to meet work participation rates or time limit requirements in a modified manner for States continuing waivers that are inconsistent with TANF; and (3) publish information related to a State's success in meeting work participation rates and time-limit restrictions, as measured against both TANF and waiver requirements. Further, if this information indicates that States continuing waivers inconsistent with TANF perform significantly below States operating fully under TANF we will consider seeking legislative changes regarding State authority to continue waivers policies inconsistent with TANF.

Governor's Certification

Because the inconsistent waiver will constitute an alternative requirement, it is important to establish the specific extent of applicability of waiver inconsistencies and their related purpose. Consequently, § 272.8 requires Governors to certify to the Secretary, up-front and in writing, the specific inconsistencies that the State chooses to continue and the reasons for continuing the alternative waiver requirements, including how their continuation is consistent with the purposes of the waiver. As indicated in our definitions of waiver and inconsistency at § 270.30, we will not recognize inconsistencies related to continuation of alternative waiver requirements for the explicit purpose of avoiding penalties for failing to meet the work participation rate or implement the time limit as these were not part of the original purpose of the waiver. The Governor's certification of waiver inconsistencies must, consistent with the approved waivers, describe the standards the State will use in: (1) assigning individuals to alternative waiver work activities or to an alternative number of hours of work; and (2) determining exemptions from or extensions to the time limit.

For additional discussion of what are waiver inconsistencies in work participation and time limits, see §§ 270.30, 271.60 and 274.1(e).

Penalty Process for States Continuing Waivers

States operating under alternative waiver requirements are at an advantage compared to other States in being able to meet participation rates and comply with time limit requirements. For example, a State with a waiver allowing unlimited job search has more options in how it can assign work and training activities to meet work participation requirements. Similarly, a State continuing waiver policies that exempt a portion of its cases which include an adult recipient from the time limit will have a lower percentage of families reaching the 60-month time limit and therefore less difficult decisions in granting applicable hardship extensions.

We have taken this advantage into consideration and determined that States continuing waivers in either of these areas will not be eligible for a reasonable cause exception from a related work participation or time-limit penalty. Nor will they be eligible for a work participation rate penalty reduction based on severity of the failure or under our discretionary authority, as otherwise allowed in accordance with § 271.51(b)(3) or (c). Given the State's advantage compared to States operating fully under TANF rules, neither a reasonable cause exception nor a reduction in the penalty is warranted.

Further, in developing a corrective compliance plan to address failure to meet work participation requirements or adhere to the restriction on the percentage of families receiving TANF benefits in excess of 60 months, we will require that States consider modification of its alternative waiver requirements as part of the plan. In making this consideration, we will expect States to assess whether continuing any of their waiver policies

hinders their ability to achieve compliance. If the State continues waivers related to the failure to achieve compliance with the work requirements described in subparts B and C of part 271 or the time limits described in §§ 274.1 and 274.2 and still fails to correct the violation, it will not be eligible for a reduced penalty for such related noncompliance regardless of whether the State made substantial progress towards achieving compliance or if the State's failure to comply was attributable to natural disaster or regional recession.

Calculating/Publishing Results

In publishing information concerning State performance related to work participation rates, it is necessary to measure compliance based on waiver rules. Similarly, reports on the percentage of cases with an adult recipient receiving Federal TANF benefits in excess of 60 months should reflect the percentage of cases receiving benefits in excess of 60 months under alternative waiver rules, an amount which may exceed the TANF 20 percent limit. However, these differential rules do not provide a comparable basis for reporting on State performance related to work, nor an accurate picture of the extent to which Federal TANF benefits are provided for more than 60 months. Therefore, we will publish reports which provide information, where applicable, concerning the percentage of cases meeting work participation requirements under both TANF and waiver rules. Similarly, we will provide information indicating the percentages of cases with an adult recipient that receive more than 60 months of Federal TANF benefits in accordance with TANF hardship exemptions and in accordance with alternative rules under waivers. The requirements specified under the TANF data collection regulations will facilitate reporting results under both sets of rules.

D. Part 273—State TANF Expenditures

Subpart A—What Rules Apply to a State's Maintenance of Effort?

What definitions apply to this part? (§ 273.0)

This section cross-references the general TANF regulatory definitions established under part 270. It also adds a definition of ''administrative costs'' that is applicable in determining whether States have exceeded the caps on ''administrative costs'' that apply separately to their Federal TANF funds and State MOE funds.

We consulted with State and local representatives and other parties and organizations on whether and how we should define the types of costs that should be considered administrative costs.

We considered not proposing a Federal definition (but requiring States to develop their own definitions and provide them to us as part of the annual addendum). That option had appeal because: (1) it is consistent with the philosophy of a block grant; (2) we took a similar approach in some other areas (i.e., in not defining individual work activities); (3) we support the idea that we should focus on outcomes, rather than process; and (4) the same definition might not work for each State. Also, we were concerned we could exacerbate consistency problems if we created a Federal definition. Because of the wide variety of definitions in other related Federal programs, adoption of a single national definition could create new inconsistencies in operational procedures within State agencies and add to the complexities administrators would face in operating these programs.

At the same time, we were hesitant to defer totally to State definitions. The philosophy underlying this provision is very important; in the interest of protecting needy families and children, it is critical that the substantial majority of Federal TANF funds and State MOE funds go towards helping needy families. If we did not provide some definition, it would be impossible to assure that the cap had meaning. Also, we felt that it would be better to give general guidance to States than to get into disputes with individual States about whether their definitions represented a ''reasonable interpretation of the statute.''

We thought that it was very important that any definition be flexible enough not to unnecessarily constrain State choices on how they deliver services. As numerous commenters have pointed out, a traditional definition of administrative costs would be inappropriate because the TANF program is unique, and we expect TANF to evolve into something significantly different from its predecessors and from other welfare-related programs. Specifically, we expect TANF to be a more service-oriented program, with substantially more resources devoted to case management and fewer distinctions between administrative activities and services provided to recipients.

You will note that the definition we have proposed does not directly address case management or eligibility determination. We understand that, in many instances, the same individuals may be performing both activities. In such cases, to the extent that a worker's activities are essentially administrative in nature (e.g., traditional eligibility determinations or verifications), the portion of the worker's time spent on such activities will be treated as administrative costs, along with any associated indirect (or overhead) costs. However, to the extent that a worker's time is essentially spent on case-management functions or delivering services to clients, that portion of the worker's time can be charged as program costs, along with associated indirect (or overhead) costs.

We believe that the definition we have proposed will not create a significant new administrative burden on States. We hope that it is flexible enough to facilitate effective case management, accommodate evolving TANF program designs, and support innovation and diversity among State TANF programs. It also has the significant advantage of being closely related to the definition in effect under the Job Training Partnership Act (JTPA). Thus, it should facilitate the coordination of Welfare-to-Work and TANF activities and support the transition of hard-to-employ TANF recipients into the work force.

We have not included specific language in the proposed rule about treatment of costs incurred by subgrantees, contractors, community service providers, and other third parties. Neither the statute nor the proposed regulations make any provision for special treatment of such costs. Thus, the expectation is that administrative costs incurred by these entities would be part of the total administrative cost cap. In other words, it is irrelevant whether costs are incurred by the TANF agency directly or by other parties.

We realize this policy may create additional administrative burdens for the TANF agency and do not want to unnecessarily divert resources to administrative activities. At the same time, we do not want to distort agency incentives to contract for administrative or program services. In seeking possible solutions for this problem, we looked at the JTPA approach (which allows expenditures on services that are available ''off-the-shelf'' to be treated entirely as program costs), but did not think that it provided an adequate solution. We thought that too few of the service contracts under TANF would qualify for simplified treatment on that basis.

We welcome comments on how to deal with this latter dilemma, as well as comments on our overall approach to the definition of administrative costs. We discussed this issue thoroughly

during our consultations, but this is a policy area where no single, clear solution emerged.

How much State money must a State expend annually to meet the TANF MOE requirement? (§ 273.1)

To ensure that States would continue to contribute their own money towards meeting the needs of low-income families, the new section 409(a)(7) requires States to maintain a certain level of spending on programs on behalf of eligible families. If a State does not meet the ''TANF MOE'' requirements in any fiscal year, then it faces a penalty for a following fiscal year. The penalty consists of a dollar-for-dollar reduction in a State's adjusted SFAG.

In order for States to know their specific TANF MOE requirements, they must understand the terms used in amended section 409(a)(7). Therefore, we address each of these terms in this proposed rule.

Historic State Expenditures

Each State's TANF MOE requirement reflects its historic spending on welfare programs. Section 409(a)(7)(B)(iii) provides two ways to calculate a State's FY 1994 expenditures. It then establishes that the lesser amount be used for determining a State's MOE requirement.

The first calculation, at section 409(a)(7)(B)(iii)(I), defines historic State expenditures as the State's FY 1994 share of expenditures for the AFDC, EA, AFDC-related child care, transitional child care, at-risk child care and JOBS programs (including expenditures for administration and systems operations). An alternative calculation appears in section 409(a)(7)(B)(iii)(II).

After examining the formula for the alternative method, we determined that the amounts resulting from this calculation would always equal or exceed the amount calculated under the first, simpler method. Therefore, we calculated the historic State expenditures based on the first method.

Adjusting A State's TANF MOE Level

The statute authorizes an adjustment to a State's TANF MOE level. If a Tribe or a consortium of Tribes residing in the State submits a plan to operate its own TANF program, and we approve this plan, then that State's MOE requirement will be reduced beginning with the effective date of the approved Tribal plan. Section 409(a)(7)(B)(iii) excludes from the TANF MOE calculation any IV–A expenditures made by the State for FY 1994 on behalf of individuals covered by an approved Tribal TANF plan. Because TANF funding for Tribes may also reflect a State's IV–F (JOBS) expenditures, we believe that it is appropriate that State TANF MOE levels be reduced for IV–A and IV–F expenditures.

Under our proposed rules, we will determine the percentage reduction in the SFAG due to Tribal programs and apply the same percentage reduction to the State's TANF MOE requirement. The State's revised TANF MOE level applies for each fiscal year covered by the approved Tribal TANF plan(s).

For example, if the amount of the Tribal Family Assistance Grant represents ten percent of the State's SFAG, then the State's MOE requirement will be reduced by ten percent. This approach provides a consistent method for determining both the reduction in the State's SFAG and required MOE level.

Applicable Percentage

The TANF MOE rules do not require that a State spend the same annual amount as it did in FY 1994. (States must spend 100 percent of the amount spent in FY 1994 to access the Contingency Fund under section 403(b). See part 274, subpart B, for a discussion of the Contingency Fund requirements.) Rather, States must maintain the ''applicable percentage'' of their FY 1994 expenditures.

Under section 409(a)(7)(B)(ii), if any State fails to meet the minimum work program participation rate requirements in the fiscal year, then it must spend at least 80 percent of its FY 1994 spending level. If a State meets the minimum work participation rate requirements, then the ''applicable percentage'' is 75 percent of its FY 1994 spending level for the year. The dollar amount representing 75 and 80 percent of the FY 1994 State expenditures is known as the TANF MOE level.

States must know the amount of their FY 1994 total expenditures and calculate the figures that represent 75 and 80 percent of those expenditures.

Data

Section 5506(f) of Pub. L. 105–33 clarifies the source and date of data to use to calculate FY 1994 State expenditures. We used the same data sources. We calculated each State's total FY 1994 expenditures and TANF MOE levels by using data on the State share of expenditures for AFDC benefits and administration, EA, FAMIS, AFDC/JOBS Child Care, and Transitional and At-Risk Child Care programs reported by States on form ACF–231 as of April 28, 1995, as well as the State share of JOBS expenditures reported by each State on form ACF–331 as of April 28, 1995. These are the same State expenditure data sources that we used to calculate the SFAGs under TANF.

We transmitted tables showing FY 1994 spending amounts and MOE levels to the States via Program Instruction Number TANF–ACF–PI–96–2, dated December 6, 1996. This Program Instruction, as well as a separate MOE table listing FY 1994 State expenditures and MOE levels for each of the 50 States and the District of Columbia, are available on the world wide web at http://www.acf.dhhs.gov/.

We also determined FY 1994 spending and MOE levels for each of the Territories. We transmitted this information to the Territories via our Regional Administrators in San Francisco and New York.

For IV–A expenditures for Puerto Rico, we used the Financial Report Form ACF–231 as of April 28, 995. However, for Guam and the Virgin Islands, we did not use the Territories' share of expenditures as submitted on the ACF–231 because their share of expenditures exceeded the amounts for which Federal reimbursement was available (due to the statutory ceiling on funding for each, under section 1108). If we used the expenditures reported on form ACF–231, then the MOE levels for both Guam and the Virgin Islands would be inordinately high. We believe that Congress' intent in establishing the historic spending level was to assure that States and Territories contribute to the specified programs at least 80 percent (or 75 percent) of the amounts they were required to expend to match Federal funds in FY 1994. Thus, for Guam and the Virgin Islands, we used the share of expenditures that corresponded to the amount on the Federal grant awards for FY 1994, i.e., the Territories' share of AFDC benefit payments (25 percent), EA (50 percent), administration (50 percent), and Child Care (25 percent).

The Territories' funds for the JOBS program were not subject to the ceiling amounts given in section 1108. They are subject to an appropriation limit, but the Territorial expenditures did not exceed this amount. Therefore, for JOBS, the Territories' MOE levels reflect expenditures reported on the ACF–331 as of April 28, 1995.

In addition, for both IV–A (AFDC, EA, and child care) and JOBS, Guam and the Virgin Islands (but not Puerto Rico) benefit from Pub. L. 96–205, as amended (48 U.S.C. 1469a). This law permits waiver of the first $200,000 of the Territories' share of expenditures. Therefore, for Guam and the Virgin Islands, we reduced the share they were

required to contribute, and thus their MOE amount, by $200,000.

FY 1997 MOE Level

Finally, we considered whether to require all States to meet the full MOE level in FY 1997, the first year for the requirement. Because States have until July 1, 1997, to implement the TANF program, many States are not operating a TANF program for all of FY 1997.

We examined two alternative adjustments to FY 1997 TANF requirements. First, we could require that all States meet 80 percent (or 75 percent) of their full FY 1994 spending level, but count the State portion of expenditures from AFDC, EA, and JOBS made in FY 1997 toward the State's MOE expenditures. Alternatively, we could prorate a State's FY 1997 MOE level based on the date of TANF implementation. Under this latter option, none of the expenditures from AFDC, EA, and JOBS made in FY 1997 prior to implementation of the State's TANF program count toward meeting the State's prorated MOE level. We determined that the former option is less acceptable because it fails to recognize the distinction between TANF and the AFDC and JOBS programs. Therefore, we decided that proration of the FY 1997 MOE level presented the most consistent and equitable approach.

Under the proposed rules, the State may prorate its TANF MOE level for FY 1997 by taking the total FY 1994 State expenditures provided to the State in Program Instruction Number TANF–ACF–PI–96–2, multiplying that number by the number of days during FY 1997 that the State operated a TANF program and dividing by 365. The State's TANF implementation date is the date given in the Department's completion letter to the State. The State must meet 80 percent (or 75 percent) of the resulting amount.

What kinds of State expenditures count toward meeting a State's annual MOE expenditure requirement? (§ 273.2)

Qualified State Expenditures

Section 409(a)(7)(B)(i) establishes the criteria for the expenditure of State funds to count toward a State's TANF MOE level. This critical provision has already engendered a number of inquiries as States and organizations strive to meet the challenge of welfare reform. While we are unable to discuss every potential use of State funds, we do discuss the specific requirements that must be met and address some of the examples that have come to our attention.

Congress wanted States to be active partners in the welfare reform process. Thus, States must spend a substantial amount of their own money on aid to needy families. While Congress gave States significant flexibility in this area, it did establish a number of important statutory restrictions on which State expenditures qualify as MOE.

Section 409(a)(7)(B)(i) defines ''qualified State expenditures'' to include certain expenditures by the State under all State programs. We interpret ''all State programs'' to mean the State's family assistance (TANF) program plus any other separate State program that assists ''eligible families'' and provides appropriate services or benefits.

Thus, States could structure the use of State expenditures for MOE purposes in three ways. The first would be a TANF program funded by expenditures of commingled State funds and Federal grant funds. The second would be a TANF program in which a State segregates its Federal grant from its State funds.

A State might choose to operate a ''segregated'' TANF program because certain limitations apply to the program funded with Federal funds that would not apply to a TANF program funded wholly with State funds, e.g., time limitations and certain alien restrictions.

Third, States could use State funds in a State program, separate from TANF, but for the types of activities listed in the statute, e.g., cash assistance, child care assistance and education activities.

In order for the expenditure of State funds under State programs to count toward meeting the State's TANF MOE, the expenditures must: (1) be made to or on behalf of an eligible family; (2) provide assistance to eligible families in one or more of the forms listed in the statute under section 409(a)(7)(B)(i)(I); and (3) comply with all other requirements and limitations set forth in this part of the proposed regulations, including those set forth in §§ 273.5 and 273.6.

Eligible Families

Section 409(a)(7)(B)(i)(I) provides that State funds under all State programs must be spent on behalf of eligible families to count toward the State's MOE. Section 409(a)(7)(B)(i)(IV) further clarifies that an eligible family means a family eligible for assistance ''under the State program funded under this part.'' We have interpreted ''under the State program funded under this part'' to mean the State's TANF program.

Thus, we propose that, in order to be considered an ''eligible family'' for MOE purposes, a family must have a child living with a custodial parent or other adult caretaker relative (or consist of a pregnant individual) and be financially needy under the TANF income and resource standards established by the State under its TANF plan. This definition would include all families funded under TANF, including certain alien families or time-limited families who cannot be served with Federal funds, but who are being served in a segregated State TANF program. (We discuss this alien limitation in detail further on in this section.)

If a family meets these criteria, then the family may be considered an ''eligible family'' for purpose of counting State-funded assistance for any of the forms listed in section 409(a)(7)(B)(i)(I) as MOE. The family does not have to be receiving TANF, but instead could be receiving assistance from a non-TANF State program. The expenditures to provide these services under all State programs may count toward the MOE requirement, provided the expenditures also meet all other requirements and limitations set forth in part 273.

A State is free to define who is a member of the family for TANF purposes and may use this same definition for MOE purposes. For example, it could choose to assist other family members, such as non-custodial parents, who might significantly enhance the family's ability to achieve economic self-support and self-sufficiency. By including such individuals within its definitions of ''eligible family,'' a State could provide them with services through TANF or a separate State program. Non-custodial parents could then engage in activities such as work or educational activities, counseling, or parenting and money management classes.

We expect States to define ''child'' consistent either with the ''minor child'' definition given in section 419 or some other definition applicable under State law.

The definition of ''eligible family'' expressly includes families that ''would be eligible for such assistance but for the application of section 408(a)(7) of this Act and families of aliens lawfully present in the U.S. that would be eligible for such assistance but for the application of title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.''

Under section 408(a)(7), States may not use Federal funds to provide TANF assistance to a family that includes an adult who has received federally-funded assistance for a total of 60 months. Therefore, if a family becomes ineligible for Federal assistance under the TANF program due to this time limit, but still

meets the definition of eligible family, then this family may be considered an eligible family for MOE purposes.

Title IV of PRWORA prohibits certain aliens from receiving certain Federal assistance. Section 401 of PRWORA prohibits all aliens who are not qualified aliens from receiving Federal public benefits, with exceptions. The definition of ''qualified aliens,'' at § 270.30, refers to section 431 of PRWORA, as amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (Pub. L. 104–208). It includes, among other alien categories, permanent residents, refugees and asylees. Section 403 of PRWORA prohibits qualified aliens (with exceptions) who arrive on or after August 22, 1996, i.e., ''newly-arrived aliens,'' from receiving, for five years after entry, Federal means-tested public benefits, which would include the federally-funded TANF program benefits, during their first five years in the country. Section 402(b) of PRWORA allows States to determine whether to provide TANF assistance at all to certain qualified aliens, while other categories of qualified aliens cannot be denied benefits on the basis of their immigration status. Given these limitations, a State could choose to provide Federal TANF assistance to qualified aliens who enter before August 22, 1996, and, for those who enter on or after enactment, after the expiration of the five-year time-bar. The State, however, would still be precluded from providing Federal TANF assistance to non-qualified aliens and to newly-arrived qualified aliens who have been in the country less than five years, except for those who are exempted from the limitations.

Under certain circumstances, however, State expenditures for aliens who are precluded from receiving Federal TANF assistance may count towards the State's TANF MOE. The family must have a child living with a parent or other adult relative (or must be a pregnant individual), and the family must be financially needy under the State's TANF income and resource standards. The expenditures must be made on one of the statutorily permitted activities enumerated in section 409(a)(7)(B)(i)(I) and meet all other requirements and limitations set forth in subpart A of this part.

Section 5506(d) of Pub. L. 105–33 clarifies that an eligible family, for TANF MOE purposes, includes legal aliens who are no longer eligible for Federal assistance due to title IV of PRWORA. The alien restrictions that apply to State-funded programs are found at title IV, section 411 of PRWORA.

Section 411(d) addresses the treatment of illegal aliens. It permits a State to provide State or local benefits to illegal aliens if the State enacted a law after August 22, 1996, which affirmatively provides for such eligibility. Thus, we conclude that if a State decides to provide assistance to illegal aliens ''in a State program funded under this Part,'' per title IV, section 411(d), such assistance may count toward the State's TANF MOE.

There is another complication in this policy area. Section 411(a) of PRWORA prohibits States from providing State or local public benefits, with exceptions, to aliens who are not qualified aliens, non-immigrants, or aliens who are paroled into the U.S. for less than one year. There are a handful of categories of legal aliens, e.g., temporary residents under the Immigration Reform and Control Act (IRCA), aliens with temporary protected status, and aliens in deferred action status, who are prohibited from receiving State or local public benefits under this provision. Thus, expenditures on assistance for legal aliens who are not qualified aliens, non-immigrants, or aliens paroled in for less than one year may not count towards a State's TANF MOE.

In addition, States may transfer funds to Tribal grantees to assist families eligible under an approved Tribal TANF plan. However, if the eligibility criteria under the Tribal TANF program are broader than under the State's TANF plan, then all expenditures of State funds within the Tribal TANF program might not be countable as MOE. Only expenditures used to assist an ''eligible family'' under the State program count. States must ensure that State funds are expended on behalf of families eligible under the State's income and resource standards.

Types of Activities

Section 409(a)(7)(B)(i)(I)(aa)–(ee) specifies that State expenditures on eligible families for the following types of assistance are ''qualified expenditures'' for MOE purposes:

- Cash assistance (see subsequent discussion on this);
- Child care assistance (see the discussion at § 273.3);
- Education activities designed to increase self-sufficiency, job training, and work (note the specific exception at § 273.4);
- Any other use of funds allowable under section 404(a)(1) (see subsequent discussion on this); and
- Associated administrative costs (subject to a 15 percent cap, as discussed subsequently).

For MOE purposes, ''assistance'' may take the form of cash, certificates, vouchers or other forms of disbursement, as determined by the State. Assistance may also be ongoing, short-term, or one-time only. The definition of assistance at § 270.30 does not limit the nature of State-funded aid provided to eligible families under TANF or separate State programs. We proposed that definition of ''assistance'' for the sole purpose of establishing when critical provisions in the statute using this term apply to States providing support to families under TANF.

Thus, State expenditures for activities such as pre-pregnancy family planning services, teen parenting programs, youth and family counseling or support services, job training or employment services, or forms of crisis assistance that meet the purposes of the program may also count toward meeting a State's MOE requirement. However, we remind States that such expenditures are subject to other limitations and restrictions under §§ 273.5 and 273.6.

We address the additional limitations and restrictions in the discussion that follows. We also discuss some specific case situations that have come to our attention. We invite comment on these and other examples of aid for eligible families that States believe could qualify.

Cash Assistance

This category includes cash payments, including electronic benefit transfers, to meet basic needs; assistance with work-related transportation costs; clothing allowances; and any child support collected on behalf of an eligible child that the State passes through to the eligible family. Section 5506(b) of Pub. L. 105–33 amended section 409(a)(7)(B)(i)(I)(aa) to expressly allow assigned child support collected by the State and distributed to the family to count toward a State's TANF MOE so long as the amount sent to the family is disregarded in determining the family's eligibility and amount of assistance.

Cash assistance also includes State expenditures on behalf of eligible families as part of a State's Earned Income Tax Credit (EITC) program. Under a State EITC program, we have determined that only the EITC cash payments actually sent to eligible families are countable as MOE. Also, in a fiscal year, States that had EITC programs in FY 1995 may count total cash payments sent to eligible families

only to the extent that these payments exceed the cash payments sent in FY 1995 (see § 273.5).

Any Other Use Of Funds Allowable Under Section 404(a)(1)

Section 404(a)(1) provides that TANF funds may be used ''in any manner that is reasonably calculated to accomplish the purpose of the TANF program, including to provide low income households with assistance in meeting home heating and cooling costs.'' Section 270.20 of these proposed rules lists the purposes of the TANF program.

Medical and Substance Abuse Services

The statute does not prohibit the expenditure of State MOE funds on medical expenditures. Therefore, States may use their own funds to provide treatment services to individuals seeking to overcome drug and/or alcohol abuse when these services assist in accomplishing the purposes of the program. This policy would also comport with both the Administration's support for drug rehabilitation services and the Congressional call for State flexibility in the operation of welfare programs.

We remind States that such expenditures must be consistent with the purposes of the program and made to or on behalf of eligible families. We also remind States that section 408(a)(6) bars the use of Federal TANF funds for medical services. Therefore, States using MOE funds to provide medical treatment services may not commingle State and Federal funds. In addition, any State expenditures on medical services that are used to obtain Federal matching funds under the Medicaid program would not count as MOE. (Refer to the discussion under § 273.6.) Finally, State expenditures on medical and substance abuse services may only count as MOE subject to the limitations set forth in § 273.5.

Juvenile Justice

State funds used to pay the costs of benefits or services provided to children in the juvenile justice system and previously matched under the EA program do not count toward MOE. More specifically, as juvenile justice services do not meet any of the purposes of the TANF program, they are not an allowable use of funds under section 404(a)(1).

While some States may expend their Federal TANF funds for this purpose, under section 404(a)(2), the definition of ''qualified State expenditures,'' for MOE purposes, does not include the reference to section 404(a)(2). Therefore, we conclude that Congress did not intend to automatically qualify all previously authorized IV–A expenditures to count as MOE. States that expend Federal funds for this purpose, under section 404(a)(2), must not commingle State funds with Federal funds if they wish the State funds to count as MOE.

State ''Rainy Day'' Funds

Finally, some States have inquired whether State funds allocated or set aside during a fiscal year as a ''rainy day'' fund, to act as a hedge against any economic downturn, could count as MOE. While we understand State intent, these allocations or set-asides do not qualify as expenditures. States must actually expend funds on behalf of eligible families during the fiscal year for expenditures to count toward the State's MOE for that fiscal year. (However, under section 404(e), States may reserve Federal TANF funds from any fiscal year for use in any other fiscal year.)

Administrative Costs

Administrative expenditures may count toward a State's MOE, but only to the extent that they do not exceed 15 percent of the total amount of qualified State expenditures for the fiscal year. This limitation is the same as the limit for TANF administrative expenditures. Therefore, we propose that the State apply the same definition of administrative costs for MOE purposes as for TANF. Section 404(b)(2) states that expenditures of Federal funds with respect to information technology and computerization needed for tracking or monitoring activities are not subject to the 15 percent TANF limit. We are providing the same flexibility with respect to the administrative cost cap on MOE expenditures. Thus, the proposed rules do not count information technology and computerization expenditures under the administrative cost cap and allows such expenditures to count toward meeting a State's MOE requirement without being limited by the 15 percent cap on administrative expenditures.

When do child care expenditures count? (§ 273.3)

There are certain restrictions on the child care expenditures that may count for TANF MOE purposes. First, only child care expenditures used to assist eligible families under the State's TANF criteria count toward the State's TANF MOE. As explained earlier, eligible families means families that have a child living with a parent or other adult caretaker relative (or consisting of a pregnant woman) and that are financially needy per the TANF income and resource standards established by the state under its TANF plan. Thus, not all State expenditures to provide child care services would necessarily qualify for TANF MOE purposes, particularly if the eligibility criteria for the child care services are broader than the State's TANF criteria, e.g., under the Child Care Development Fund (CCDF).

Second, section 409(a)(7)(B)(iv) establishes four general restrictions on State expenditures. (These restrictions are listed in § 273.6.) Two of the restrictions apply to child care expenditures: subsections 409(a)(7)(B)(iv)(IV) and 409(a)(7)(B)(iv)(I).

Subsection 409(a)(7)(B)(iv)(IV) excludes any State funds expended as a condition of receiving Federal funds under other Federal programs from counting toward a State's TANF MOE. However, this subsection also provides an exception to this restriction. The exception applies to the CCDF Matching Fund (i.e., the State's CCDF MOE and the State's share of matching funds). State child care expenditures used to meet the child care MOE requirement or to receive Federal matching funds may also count toward meeting the State's TANF MOE requirement if the expenditures were made on behalf of members of an eligible family.

But, subsection IV limits the amount of the above-mentioned State child care expenditures that may count for TANF MOE purposes to the State's share of expenditures in FY 1994 or FY 1995, whichever is greater, for the programs described in section 418(a)(1)(A). These are the former title IV-A child care programs, i.e., the AFDC/JOBS child care, transitional child care, and at-risk child care programs. A State's child care MOE amount (for purposes of qualifying for child care matching funds) is also based on its expenditures for title IV-A child care in FY 1994 or FY 1995, whichever is greater. Hence, the amount of State child care expenditures used to meet the child care MOE requirement and to receive Federal Matching Funds that may count for TANF MOE purposes is limited to the amount of the child care MOE requirement for the State under section 418(a)(2)(C).

If a State has additional State child care expenditures, i.e., expenditures which have not been used toward meeting the child care MOE requirement or to receive Federal matching funds, these expenditures may count toward the State's TANF MOE provided the expenditures meet all other requirements and limitations set forth in subpart A of this part. We concluded that subsection IV does not limit the amount of such additional

child care expenditures which may count for TANF MOE purposes.

Subsection 409(a)(7)(B)(iv)(I) excludes any expenditures that come from amounts made available by the Federal government. Therefore, Federal funds transferred from the TANF program to the Child Care and Development Block Grant (also known as the Discretionary Fund) would not count toward MOE, nor would Federal funds received under CCDF.

When do educational expenditures count? (§ 273.4)

Only expenditures on educational services or activities that are targeted to eligible families to increase self-sufficiency, job training, and work may count toward a State's MOE. The statute excludes educational services or activities that are generally available, including through the public education system. The conference report confirms this exclusion. In H. Rept. 104–725, page 277, the conferees agreed to exclude ''any expenditure for public education in the State other than expenditures for services or assistance to a member of an eligible family that is not generally available to other persons.''

Expenditures on special services that are targeted to an ''eligible family'' and are not generally available to other residents of the State may count. These could include contracted educational services or activities, such as special classes for teen parents in high schools or other settings; special classes in English as a second language for legal immigrants; special classes in remedial education to achieve basic literacy; special classes that lead to a certificate of high school equivalency (GED); or pre-employment or job-readiness activities.

We also note that expenditures on supportive services, such as transportation, to assist a member of an eligible family in accessing educational activities may also count toward a State's MOE, either as cash assistance or another type of aid consistent with the purposes of the Act. (See §§ 273.5 and 273.6 for other general restrictions on these expenditures.)

When do expenditures in separate State programs count? (§ 273.5)

Section 409(a)(7)(B)(i)(II) establishes limits on the amount of expenditures that may count when the MOE expenditures are for activities under separate State or local programs. The heading for the provisions under this section indicates that ''transfers from other State and local programs'' must be excluded from consideration toward a State's MOE. We received numerous questions about this language. We do not believe that the language intended to convey merely a literal or physical transfer of funds. Instead, we believe that Congress wanted to prevent States from substituting existing expenditures in these outside programs for cash welfare and related assistance to needy families and claiming them as expenditures for MOE purposes. Therefore, section 409(a)(7)(B)(i)(II)(aa) provides that the money spent under State or local programs may count as MOE only to the extent that the expenditures exceed the amount expended under such programs in the fiscal year most recently ending before the date of enactment (August 22, 1996). Thus, States may count only additional or new expenditures, i.e., expenditures above FY 1995 levels.

Section 409(a)(7)(B)(i)(II)(bb) provides what may appear to be an alternative limitation. We believe that this provision was intended as an exception to the limitation under (aa). Under provision (bb), State expenditures under any State or local program during a fiscal year may count toward a State's MOE to the extent that the State is entitled to a payment under former section 403 as in effect before the date of enactment with respect to the expenditures. We interpret this to mean that State funds expended under separate State/local programs that had been previously authorized and allowable under the former AFDC/EA/JOBS programs in effect as of August 21, 1996, may have all such expenditures count toward the State's MOE. In other words, the limit under (aa) does not apply; there is no requirement that these expenditures be additional or new expenditures, above FY 1995 levels.

What kinds of expenditures do not count? (§ 273.6)

As previously discussed, expenditures under State programs (TANF and separate State programs) do not count if they are not made on behalf of eligible families.

There are also specific statutory requirements that affect the use of State funds under a State's TANF program. The specific requirements that apply depend on whether the expenditures meet the definition of assistance under § 270.30; the language used in each TANF provision or in a related provision elsewhere in the statute; and the manner in which a State structures its TANF program and accounts. (None of the TANF program requirements directly apply to eligible families served in separate State programs.)

Provisions in the statute that use the terms ''under the program,'' ''under the program funded under this part,'' and ''under the State program funded under this part'' apply to the State's TANF program, regardless of the funding source. That is, they apply to segregated Federal programs, commingled State/Federal programs, and segregated State programs. Thus, all families receiving TANF assistance (whether funded with State or Federal funds) must meet work participation and child support requirements.

Provisions pertaining solely to the use of Federal funds would not apply to families assisted under TANF with State-only funds. Consequently, if State funds are segregated from Federal funds, State expenditures on ''assistance'' must comply with all the rules pertaining generally to the State's TANF program, e.g., work and child support requirements. However, they are not subject to requirements that pertain only to the use of Federal funds.

These requirements are found in the provisions in the statute using the term ''grant,'' or ''amounts attributable to funds provided by the Federal government.'' This language refers to the Federal funds provided to the State under section 403. Therefore, those provisions affect only the use of Federal TANF funds, unless the State commingles its money with Federal TANF funds. If commingled, Federal and State funds become subject to the same rules. Thus, commingling of State and Federal funds can reduce the total amount of flexibility available to the State in its use of both Federal and State funds.

The provisions governing the use of Federal TANF funds are generally found in sections 404 and 408 of the Act and section 115 of PRWORA. The proposed regulations at § 273.11 provide additional requirements regarding allowable uses of Federal TANF funds.

The statute also provides several general restrictions on MOE expenditures. Pursuant to section 409(a)(7)(B)(iv), the following types of expenditures do not count: (1) expenditures of funds that originated with the Federal government; (2) State funds expended for the Medicaid program under title XIX of the Act; (3) any State funds used to match Federal Welfare-to-Work funds provided under section 403(a)(5) of the Act, as amended by sections 5001(a) (1) and (2) of Pub. L. 105–33; or (4) expenditures that States make as a condition of receiving Federal funds under other programs. See discussion of § 273.3 for additional information.

Section 5506(c) of Pub. L. 105–33 amends section 409(a)(7)(B)(i) by adding another restriction under section 409(a)(7)(B)(i)(III). Pursuant to section 409(a)(12), States must expend State funds equal to the total reduction in the State's SFAG due to any penalties incurred. Section 409(a)(7)(B)(i)(III) provides that such expenditures may not count toward a State's TANF MOE. (See § 274.50.)

TANF funds transferred to the Social Service Block Grant Program under title XX of the Act or transferred to the Child Care and Development Block Grant program (also known as the Discretionary Fund within the Child Care and Development Fund) do not count toward meeting a State's MOE requirement because of the first restriction under 409(a)(7)(b)(iv) that prohibits funds that originated from the Federal government from being used for MOE purposes.

Finally, it is important to note that only State expenditures made in the fiscal year for which TANF funds are awarded count toward meeting the MOE requirement for that year. Therefore, expenditures made in prior fiscal years or, in the case of FY 1997, expenditures made prior to the date the State starts its TANF program do not count as TANF MOE.

How will we determine the level of State expenditures? (§ 273.7)

Congress recognized that State contributions would play an important role in making welfare reform a success. We are interested in learning about the ways in which States help families move toward economic self-support and self-sufficiency. We are particularly interested in the types of services eligible families are receiving through separate State programs or activities. We propose to use the administrative avenues available to us to learn about expenditures under separate State programs.

To help determine if States are meeting MOE requirements, we have created a TANF Financial Report. The report will require the State to specify expenditures under its TANF program and other separate State programs that serve eligible families. Please refer to the description of the TANF Financial Report under part 275 for additional information.

We are also proposing an annual addendum to the report for the fourth quarter. The addendum will supplement information on separate State programs that is captured only in a general fashion in the quarterly report.

Thus, we propose that the annual addendum contain: (1) a description of the specific State-funded program activities provided to eligible families; (2) the program's statement of purpose (how the program serves eligible families); (3) the definitions of each work activity in which families in the program are participating; (4) a statement whether the program/activity had been previously authorized and allowable as of August 21, 1996 under former section 403; (5) the FY 1995 State expenditures for each program/activity not so authorized; (6) the total number of eligible families served by each program/activity as of the end of the fiscal year; (7) the eligibility criteria for families served under each program or activity; and (8) a certification that each of the families served met the State's criteria for ''eligible family.'' This information will enable us to understand how separate State programs are serving needy families outside of the TANF program and to report on those services to Congress.

What happens if a State fails to meet the TANF MOE requirement? (§ 273.8)

Under section 409(a)(7)(A), if a State does not meet the TANF MOE requirement, we will reduce the amount of the SFAG payable for the following fiscal year on a dollar-for-dollar basis.

Section 5001(g) of Pub. L. 105–33 adds another penalty to section 409(a) for a State that receives a Welfare-to-Work formula grant pursuant to section 403(a)(5)(A), as amended by section 5001(a)(1), but fails to meet the TANF MOE requirement for the fiscal year. Under section 409(a)(13), the amount of the State's SFAG will be reduced for the following fiscal year by the amount of the Welfare-to-Work formula grant paid to the State.

May a State avoid a TANF MOE penalty because of reasonable cause or through corrective compliance? (§ 273.9)

Under section 409(b)(2), a State may not avoid a penalty for failure to meet its TANF MOE requirement based on reasonable cause. In addition, section 5506(m) of Pub. L. 105–33 amended section 409(c)(4) to provide that a State may not avoid the penalty through a corrective compliance plan.

Congress' decision not to provide for a reasonable cause exception or corrective compliance in TANF MOE penalty cases indicates that Congress viewed this requirement as critical. In short, the MOE requirement is crucial to meeting the work and other objectives of the Act.

Subpart B—What rules apply to the use of Federal funds?

What actions are to be taken against a State if it uses Federal TANF funds in violation of the Act? (§ 273.10)

Section 409(a)(1) contains two penalties related to use of Federal TANF funds (i.e., all Federal funds under section 403) in violation of TANF program requirements. The first is a penalty in the amount of funds that are used improperly, as found under the Single Audit Act. We would reduce the SFAG payable to the State for the immediately succeeding fiscal year quarter by the amount misused.

In addition, we would take a second penalty, equal to five percent of the adjusted SFAG, if we find that a State has intentionally misused funds. The criteria for ''intentional misuse'' is found at § 273.12.

For both of these penalties, States may request that we consider reasonable causes for not taking the penalty and may submit a corrective compliance plan for correcting the violation.

What uses of Federal TANF funds are improper? (§ 273.11)

The statute contains many prohibitions and restrictions on the use of Federal TANF funds. In determining if funds have been used ''in violation of this part,'' States should particularly note the prohibitions in section 408 of the Act and section 115 of PRWORA. These sections provide that States must not use Federal TANF funds to provide assistance to:

- A family with an adult who has received assistance funded with Federal TANF funds for 60 months (except for a family included in the 20 percent hardship exemption);
- A family without a minor child (or pregnant individual);
- A family not assigning support rights;
- An unmarried parent under 18, without a high school diploma, who does not attend high school or equivalent training;
- An unmarried parent under 18 not living in an adult-supervised setting;
- A fugitive felon and probation and parole violator;
- A minor child absent from the home 45 days (or at State option, 30–180 days);
- For ten years, a person found to have fraudulently misrepresented residence to obtain assistance; and
- An individual convicted of certain drug-related offenses unless the State has enacted a law to exempt such individuals from the prohibition (refer to section 115 of PRWORA).

Also, States must not use Federal TANF funds for medical services, except for pre-pregnancy family planning services. This prohibition raised a number of concerns among States and advocates that are discussed below as one of the clarifications on the use of Federal TANF funds.

Section 404 also limits the use of Federal TANF funds. More specifically, section 404(a)(1) provides that TANF funds may be used ''. . . in any manner that is reasonably calculated to accomplish the purpose of this part, including to provide low income households with assistance in meeting home heating and cooling costs. . . .'' Conversely, TANF funds cannot be used in a manner not reasonably calculated to serve the purposes of the program.

In determining if an activity may be funded with TANF funds under this provision, you should refer to the purposes described in section 401 and reiterated at § 270.20. Also, you should be aware that the specific prohibitions or restrictions in the statute (e.g., the prohibitions in section 408) apply even if an activity seems otherwise consistent with the purposes in section 404(a)(1).

In addition, section 404(a)(2), as amended by section 5503 of Pub. L. 105–33, permits Federal TANF funds to be used ''in any manner that the State was authorized to use amounts received under part A or F, as such parts were in effect on September 30, 1995 or (at the option of the State) August 21, 1996.'' We interpret this provision to cover activities that are not permissible under section 404(a)(1), but were included in a State's approved State AFDC plan, JOBS plan, or Supportive Services Plan as of September 30, 1995, or, at State option, August 21, 1996. An example of such an activity is Emergency Assistance juvenile justice activities that were included in many State plans. Under this provision, only those States whose approved AFDC State plans included juvenile justice activities as of September 30, 1995, or, at State option, August 21, 1996, may use Federal TANF funds for those activities. Further, as with section 404(a)(1), this provision does not permit Federal TANF funds to be used for any activity that is otherwise prohibited or restricted under the statute.

States should also note that if they exceed the 15 percent limit on administrative costs under section 404(b), we will consider any amount of funds exceeding the limit to be misused funds. Likewise, we would consider unauthorized or inappropriate transfers of TANF funds to be a misuse of funds. We would consider any of the following transfers to be inappropriate or unauthorized: transfers to any program except the Child Care and Development Block Grant (also known as the Discretionary Fund within the Child Care and Development Fund) or the Social Services and Block Grant Program under title XX of the Social Security Act; transfers to those two programs in excess of the 30 percent cap; and transfers to SSBG in excess of the 10 percent cap.

OMB Circulars A–102 and A–87 also include restrictions and prohibitions that limit the use of Federal TANF funds. The Department previously promulgated A–102 (the common rule) in its regulations at part 92 of title 45, ''Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.''

All provisions in part 92 are applicable to the TANF program. TANF is not one of the Block Grant programs exempt from the requirements of part 92, as OMB has not taken action to exempt it. Rather, OMB has determined that TANF should be subject to part 92. Section 417 does not prevent us from applying the part 92 regulations to TANF because the referenced requirements are not developed to enforce substantive provisions under this part. We believe that Congress understood that TANF, like other Federal grant programs, was subject to existing appropriations, statutory and regulatory requirements regarding the general administration of grants, notwithstanding section 417. Section 417 was not meant to invalidate other requirements that Congress and Federal agencies, primarily OMB, have put in place to assure that Federal grant funds are properly administered or to inhibit Federal agencies from fulfilling their financial management responsibilities in managing their programs.

By reference, part 92 also includes A–87, the ''Cost Principles for State, Local and Indian Tribal Governments,'' the basic guidelines for Federal awards. These guidelines provide, in part, that an allowable cost must be necessary and reasonable for the proper and efficient administration of a Federal grant program, and authorized or not prohibited under State or local laws or regulations.

A–87 also includes some specific prohibitions on the use of Federal funds generally that apply to Federal TANF funds. For example, A–87 prohibits the use of Federal funds for alcoholic beverages, bad debts, and the salaries and expenses of the Office of the Governor.

Clarifications of Use of Federal TANF Funds—Substance Abuse Services

In our consultations, we received several inquiries regarding the use of Federal TANF funds for substance abuse treatment, i.e., treatment for alcohol and drug abuse. In light of the prohibition on the use of Federal TANF funds for ''medical services, except for pre-pregnancy family planning activities,'' we held discussions with other Federal agencies and learned that in many, but not all instances, the treatment of alcohol and drug abuse involves not just ''medical services,'' but other kinds of social and support services as well.

Allowing States to use Federal TANF funds for substance abuse treatment is programmatically sound since it may help clients make successful transitions to work and provide for a stable home environment for TANF children. Accordingly, we are proposing a policy that permits States to use Federal TANF funds for drug and alcohol abuse treatment services to the extent that such services are not medical. States will have to look at the range of services offered and differentiate between those that are medical and those that are not. In short, States cannot use Federal TANF funds for services that the State identifies as medical; they may only use Federal funds used for services that are non-medical.

Clarification of the Use of Federal TANF Funds for Construction and Purchase of Facilities

The Comptroller General of the United States has prohibited the use of Federal funds for the construction or purchase of facilities or buildings unless there is explicit statutory authority permitting Federal grant funds to be used for this purpose. Since the statute is silent on this, States must not use Federal TANF funds for construction or the purchase of facilities or buildings.

Clarification of the Use of Federal TANF Funds as State Match for Other Federal Grant Programs

Federal TANF funds under section 403(a) may be used to match other Federal grant programs if authorized under the statute of the grant program. However, these funds are still subject to the TANF program requirements and must be used in accordance with the purposes of the TANF program and with these proposed regulations.

Clarification of the Use of Federal TANF Funds to Add to Program Income

We have received a number of inquiries about whether or not TANF funds may be used to generate program income. An example of program income

is the income a State earns if it sells another State a training curricula that it has developed, in whole or mostly, with Federal TANF funds.

States may generate program income to defray costs of the program. Under 45 CFR 92.25, there are several options for how this program income may be treated. For the TANF program, in order to give States flexibility in their use of TANF funds, we are proposing to permit States to add to their TANF grant program income that has been earned by the State. States must use such program income for the purposes of the TANF program and for allowable TANF activities. We will not require States to report on the amount of program income earned, but they must keep on file financial records on program income earned and the purposes for which it is used in the event of an audit or review.

How will we determine if a State intentionally misused Federal TANF funds? (§ 273.12)

To determine if funds have been intentionally misused, we will require the State to demonstrate to our satisfaction that TANF funds were spent for purposes that a reasonable person would consider to be within the purposes of the TANF program. Funds will also be considered intentionally misused if there is documentation, such as Federal guidance or policy instructions, that provides that funds must not be used for such purposes, or if the State misuses the funds after receiving notification from us that such use is not allowable.

What types of activities are subject to the administrative cost limit on Federal TANF grants? (§ 273.13)

Section 404 of the Act sets forth the various ways in which a State may expend its Federal TANF grant under section 403. As a general rule, under section 404(b)(1), only 15 percent of a State's Federal fiscal year grant may consist of administrative expenditures. This limit is reached in the quarter in which a State's administrative expenditures, which may be made over one or more fiscal years for each fiscal year grant, equal 15 percent of the fiscal year grant.

For the purpose of the 15 percent limit, State expenditures on information technology and computerization necessary for tracking or monitoring cases covered by the TANF program do not count. But remaining of particular interest to our State partners and other interested parties is the definition of the costs that are included as administrative costs. This information is critical to State planning for welfare reform.

In this proposed rule, the term ''administrative costs'' will include only those expenditures that are subject to the 15 percent limit in section 404(b). Expenditures for information technology and computerization necessary for tracking and monitoring and other expenditures, that have traditionally been considered ''administrative costs'' but that are outside of the 15 percent limit, are referred to as ''administrative costs outside of the 15 percent limit.''

We include our proposed definition of ''administrative costs'' at § 273.0(b). In the preamble for § 273.0, we include a detailed explanation of the proposal.

Pursuant to section 404(d), States may transfer up to 30 percent of each fiscal year's SFAG to the Child Care and Development Block Grant Program (also known as the Discretionary Fund of the Child Care and Development Fund) and the Social Services Block Grant Program under title XX of the Act. All 30 percent may be transferred to CCDBG, but no more than ten percent can be transferred to SSBG. As transferred funds must then be treated as if they were funds appropriated to CCDBG and title XX, and not as TANF funds, we will reduce the total amount of TANF funds available for administrative costs by the total amount of any such transfers. The 15 percent ceiling applies to each fiscal year's adjusted SFAG.

If a State's administrative costs exceed the 15 percent limit, the penalty for misuse of funds will apply. The penalty will be in the amount spent on administrative costs in excess of 15 percent. We will take an additional penalty in the amount of five percent of the adjusted SFAG if we find that a State has intentionally exceeded the 15 percent limit.

States must allocate costs to proper programs. Under the Federal Appropriations Law, grantees must use funds in accordance with the purpose for which they were appropriated. In addition, as stated previously, the grants administration regulations at part 92, and OMB Circular A–87, ''Cost Principles for State, Local, and Indian Tribal Governments'' apply to the TANF program. A–87, in particular, establishes the procedures and rules applicable to the allocation of costs among programs and the allowability of costs under Federal grant programs such as TANF.

Subpart C—What Rules Apply to Individual Development Accounts?

What definitions apply to Individual Development Accounts (IDAs)? (§ 273.20)

An IDA is defined as an account established by or for an individual who is eligible for TANF assistance to allow the individual to accumulate funds for specific purposes. A number of other terms used in discussing IDAs are also defined.

May a State use the TANF grant to fund IDAs? (§ 273.21)

Section 404(h) of PRWORA gives States the option to fund IDAs with TANF funds for individuals who are eligible for TANF assistance.

Are there any restrictions on IDA funds? (§ 273.22)

IDAs are similar to savings accounts and enable recipients to save earned income for certain, specified, significant items. Individuals may spend IDA funds only to purchase a home, pay for a college education, or start a business.

How does a State prevent a recipient from using the IDA account for unqualified purposes? (§ 273.23)

Money in an IDA account will not affect a recipient's eligibility for assistance. Withdrawals from the IDA should be paid directly to a college or university, to a bank, savings and loan institution, or to an individual selling a home or to a special account if the recipient is starting a business. Thus, IDAs may provide an incentive for recipients to find jobs and use their earned income to save for the future.

Section 404(h) authorizes the Secretary to establish regulations to ensure that individuals do not withdraw funds held in an IDA except for one or more of the above qualified purposes.

In our research, we found several States had established Individual Development Accounts under their Welfare Reform Demonstration Projects and subsequently transferred those provisions to their TANF programs. Each State had designed its own procedures for preventing withdrawals or penalizing recipients who withdrew funds from their IDAs for unauthorized purposes. For example, several States count a withdrawal for a non-qualified purpose as earned income in the month of withdrawal unless the funds were already counted as earned income. Other States treat such withdrawals against a family's resource limit. Still another State calculates a period of ineligibility using a complex formula.

With this in mind, we did not feel that it was necessary to be overly prescriptive in mandating how States ensure that individuals do not make unauthorized withdrawals from IDA accounts. In keeping with the intent of PRWORA, we have tried to give States maximum flexibility to establish procedures that ensure that only qualified withdrawals are made.

In addition, section 404(h)(5)(D) gives the Secretary the authority to determine whether or not a business contravenes law or public policy. We have decided that we should base our determination on the business's compliance with State law or policies. Our proposal will allow States maximum flexibility in setting up these programs, while assuring that a business established by a needy family meets State requirements.

We have incorporated statutory provisions in the regulations for the reader's convenience.

E. Part 274—Other Accountability Provisions

Subpart A—What Specific Rules Apply for Other Program Penalties?

What definitions apply to this part? (§ 274.0)

This section cross-references the general TANF regulatory definitions established under part 270.

What restrictions apply to the length of time Federal TANF assistance may be provided? (§ 274.1)

Under the former AFDC program, families could receive assistance as long as necessary, if they continued to meet program eligibility rules. Under the TANF program, Congress established a maximum length of time in which a family may receive assistance funded by Federal funds.

Sections 408(a)(1)(B) and 408(a)(7) stipulate that States may not use Federal funds to provide assistance to a family that includes an adult who has received assistance for more than five years. Therefore, when a parent or other adult caretaker relative of a minor child applies for and receives federally-funded assistance under the State's TANF program on behalf of him/herself and his/her family, Federal funding of that assistance may not last longer than five years. (Certain exceptions are covered later in the discussion of this section.)

As discussed earlier in this preamble (e.g., at § 271.22), we are concerned that States might define eligibility in such a way as to avoid the time limits (i.e., by converting cases to be child-only cases). Thus, under this section, we would prohibit States from excluding adults from their definition of families for the purpose of avoiding this penalty, and we would require annual reporting of the number of such families excluded (along with the basis for excluding them). Further, if we determine that States were defining ''families that include an adult'' so as to avoid a time-limit penalty, we would add the child-only cases back and recalculate the number of cases over the limit. We would determine whether a State was subject to a penalty based on this recalculation.

The five-year limit on Federal funding is calculated as a cumulative total of 60 months. Section 408(a)(7)(B) clarifies that the State must disregard any month for which assistance has been provided to an individual who is a minor child who is not the head of a household or married to the head of a household. However, any month when a pregnant minor or minor parent is the head-of-household or married to the head-of-household does count toward the five-year limit. The five-year limitation on Federal funding also disregards any months that an adult received assistance while living in Indian country (as defined by section 1151 of title 18, United States Code) or in an Alaska Native Village where at least 50 percent of the adults are not employed (see § 274.1(b)(2)).

Section 5001(d) of Pub. L. 105–33 added subsection (G) to section 408(a)(7). This subsection provides for special treatment of assistance provided to a family with Welfare-to-Work grant funds (formula or competitive) under the time-limit provision. First, months in which a family receives cash assistance funded with Welfare-to-Work grant funds (under section 403(a)(5) of the Act) do count towards the five-year limit; however, months in which a family receives only non-cash assistance under WTW do not count towards the five-year limit. Secondly, families may receive assistance funded with Welfare-to-Work grant funds even though they are precluded from receiving other TANF assistance because of the five-year limit.

Some families may receive assistance from Federal funds for more than five years based on hardship or if the family includes an individual who has been battered or subjected to extreme cruelty as defined in section 408(a)(7)(C)(iii). Under section 408(a)(7)(C), the average monthly number of such families may not exceed 20 percent of the State's average monthly caseload during either the fiscal year or the immediately preceding fiscal year, whichever the State elects.

The Act does not specifically prescribe whether a family can be excepted from the time limit before they have received 60 cumulative months of Federal assistance or whether it can only be applied after the limit is reached. As the purpose of the provision is to provide an extension to the 60-month limit, we propose that it would only apply after that limit is reached. No determination of whether a State has exceeded the cap will be made until some families in the TANF program have received at least 60 cumulative months of federally-funded assistance. We believe that this approach is the most straightforward and comports with Congressional intent that TANF assistance be provided on a temporary basis while a family becomes self-sufficient. Thus, unless the minor child or Native American statutory disregard applies, Federal support would cease once any adult in the family has been assisted for 60 total months with Federal funds unless the State chooses at that time to include the family in its 20 percent exception. However, the State may elect to use State funds to continue to pay eligible families.

The provision is a time limit on Federal funding, and does not set an upper or lower bound on the amount of time a State could provide assistance to an individual family with State funds. States are free to impose shorter time limits on the receipt of assistance under their programs. They are also free to allow receipt for longer periods if the assistance is paid from State funds or if the family meets the criteria the State has chosen for extension and fits with the 20 percent limit.

We are very interested in comments on our approach to clarifying the time limit on assistance. We will also be paying close attention to learn what is happening to families as they begin to reach time limits under waiver and TANF rules. In this regard, tracking the number of months that each family has received TANF assistance is very important, both to the State and to the family. We urge States to regularly provide families with information on how close they are to reaching the time limit. This information should help strengthen the family's focus on achieving self-sufficiency.

We have received numerous inquiries regarding the relationship between good cause waivers of the time limit permitted under the Family Violence Option at section 402(a)(7) and the limit on the exceptions to the Federal time limit at section 408(a)(7)(C)(ii). The key issue is whether the 20 percent limit on hardship exceptions includes families of domestic violence victims.

Section 402(a)(7)(B) expressly refers to section 408(a)(7)(C)(iii) in applying the meaning of the term ''domestic violence'' to the Family Violence Option at section 402(a)(7)(A). Section 408(a)(7)(C)(iii) defines ''battered'' or ''subjected to extreme cruelty'' for purposes of describing families who may qualify for a hardship exemption at section 408(a)(7)(C)(i), and section 408(a)(7)(C)(ii) specifies a 20 percent limit on the exceptions to the time limit due to hardship. Consequently, we conclude that the statutory language includes the number of families waived from the five-year time limit per section 402(a)(7) within the 20 percent ceiling established under section 408(a)(7)(C)(ii).

We further note that Congress chose not to amend the statute as part of budget reconciliation. Thus, our proposed policy includes these cases within the 20 percent limitation. However, our policy would enable a State to claim ''reasonable cause'' when its failure to meet the five-year limit could be attributed to its provision of bona fide good cause domestic violence waivers. See § 274.3 for additional information.

As previously discussed, section 408(a)(7)(D) provides an exemption to the time limit on receipt of federally-funded TANF assistance for families living in Indian country or in an Alaskan Native village. The months a family, that includes an adult, lives in Indian country or in an Alaskan Native village, where at least 50 percent of the adults are not employed, do not count when determining whether the adult has received federally-funded assistance for 60 cumulative months. In accordance with section 408(a)(7)(D), as amended by section 5505(d)(2) of Pub. L. 105–33, the percentage of adults who are not employed in a month will be determined by the State using the most reliable data available for the month, or for a period including the month.

This exception does not include families receiving assistance under an approved Tribal family assistance plan because these families are covered by the requirements at section 412.

In our consultations on the regulations, questions were raised about the relationship of section 415, the application of waivers inconsistent with PRWORA, and the time limit on Federal assistance. Some waivers include provisions for time limiting assistance.

As discussed in the preamble to § 270.30, we define what it means for a provision of the Act to be inconsistent with provision(s) in a waiver. We believe it is crucial to define what ''inconsistent'' means because: (1) the Act does not define it; (2) States need to know whether any time-limit policies in their waivers are inconsistent with the provisions in sections 408(a)(1)(B) and 408(a)(7); and (3) if there is an inconsistency, States need to know how the time-limit restrictions under 408(a)(1)(B) and 408(a)(7) apply in relation to the State's policy. We must define the term to implement the time limit penalty provision at section 409(a)(9), and States must understand what it means when it is applied to the five-year limit, in order to avoid that penalty.

Under our proposed definition of inconsistency, the five-year limit on Federal assistance is inconsistent with a State's waiver only: (1) if the State has an approved waiver (a) that provides for terminating cash assistance to individuals or families because of the receipt of assistance for a period of time specified by the approved waiver(s), and (b) under which the State would have to change its waiver policies (including policies regarding exemptions and extensions) in order to comply with the five-year limit on Federal assistance; or (2) for a control or experimental treatment group where a State chooses to maintain prior law policies applicable to research group cases for the purpose of completing an impact evaluation using an experimental design.

We believe that this proposed regulation is consistent with the language in the conference report, H. Rept. 104–725 at 311, indicating agreement by the conferees that:

> * * * such waivers may only apply * * * to the specific program features for which the waiver was granted. All * * * program features of the State program not specifically covered by the waiver must conform to this part (i.e., to TANF).

Except for control and experimental treatment group cases maintained for the purpose of completing an impact evaluation of the waiver policies, a State that does not have an approved time-limit provision in its waiver that meets the above criteria must adhere to the provisions set forth in sections 408(a)(1)(B) and 408(a)(7). A State that does have an approved time-limit provision in its waiver that meets the above criteria does not have to follow the provisions of the five-year limit, to the extent they are inconsistent, until the waiver expires. Several examples of the application of the proposed policy follow.

A State has an approved seven-year waiver that terminates a family's cash benefits after 18 months of benefits if the adult fails to participate in a work program. Assistance does not end because of the passage of time, but because of the adult's failure to participate in a required work activity. The waiver policy does not meet the first prong of the test for time limit inconsistency, as it is a work policy. Therefore, it is not inconsistent with the Federal time-limit provision. The State will have to adhere to the five-year limit under sections 408(a)(1)(B) and 408(a)(7).

Even if a State has an approved time-limit waiver policy, we believe that the waiver policy and the Federal five-year limit can operate concurrently. In most cases, the State would not have to change waiver policy because of the Federal limit, and, thus, there would not be an inconsistency. As a general rule, individuals subject to a State time limit under an approved waiver will concurrently be subject to the Federal time limit.

For example, a State has been granted an eleven-year waiver to operate a demonstration that limits the receipt of assistance by a family to two years (with extensions under certain circumstances). Because the Federal time limit can run concurrently, a family receiving assistance for two years under the State's time limit is also receiving two years of assistance under the Federal five-year limit. Once the demonstration ends, if the family has received just two years of TANF assistance, then the family can receive three more years of federally-funded assistance under the five-year limit (assuming all other eligibility criteria are met per the State's TANF plan). Alternatively, should the family move to another State, that State can provide three more years of federally-funded assistance (assuming the State provides five years of TANF assistance).

Under this policy, there will be circumstances under which the State may use Federal funds for longer than five years to provide assistance to a family that includes an adult. For example, under the terms of the waiver, assistance is extended so long as the eligible adult in the family complies with his/her personal responsibility plan. In such situations, we propose that a State may apply extensions of its time limit in accordance with the terms of the approved waiver in lieu of the provision under section 408(a)(7)(C)(ii).

We believe that this approach comports with the intent of section 415. Section 408(a)(7)(C) permits Federal funds to be used to continue to assist families beyond the five-year limit based on hardship. Under section 408(a)(7)(C)(ii), a State may apply this extension for up to only 20 percent of

its average monthly caseload during the fiscal year or the immediately preceding fiscal year, whichever the State elects. A State's approved waiver may very well include a provision for extending assistance as needed to cases meeting the waiver requirements, without limit. Under the above proposal, a State may apply extensions of its time limit, without caseload limits, in accordance with the terms of its approved waiver.

Another State might have waivers approved for a nine-year period that apply a three-year time limit on receipt of assistance to adults in the family (with extensions under certain circumstances). The children in the family continue to receive assistance even after assistance ends for the adults. If the adults receive no extension, there is no inconsistency and the children may continue to receive benefits. If the adults receive extensions under the demonstration, and thus more than five years of assistance, there would be an inconsistency because the State would need to change its waiver policy and terminate assistance. Therefore, the family can continue to receive assistance as long as the adults have an extension and the children can receive assistance even if the adult is terminated. (Note that once the adults are removed from the State-defined family, the Federal time limit clock does not advance.) When the waiver authority ends, the State will need to determine if the adults in demonstration families received five years of federally-funded TANF assistance. If not, the families will be eligible to receive assistance with Federal TANF funds for up to a total of 60 cumulative months (assuming all other eligibility criteria are met per the State's TANF plan).

We recognize that there will be situations, although limited, in which, as a result of a waiver policy, a family will not accrue months towards the Federal time limit even though it receives assistance with Federal (or commingled) funds. For months when a family is exempt from the State time limit (e.g., when the adult in the family is aged or disabled), the family is also exempt from the Federal time limit during the duration of the waiver authority. To subject such families to a time limit would be inconsistent with the State's approved waiver policy. Therefore, for the period of the waiver authority, the number of months the family receives assistance do not accrue against the Federal five-year time limit as long as the family remains exempt under the State time limit. These exemptions cease once the waiver authority ends or if the family moves to another State.

A family that is in the control or experimental treatment group maintained for the purpose of completing an impact evaluation of a waiver demonstration program would not be subject to a time limit. Therefore, it would not begin to accrue months towards the Federal time limit until the end of the waiver demonstration (or sooner if the evaluation is discontinued) and would not count towards the 20 percent limit on extensions.

What happens if a State does not comply with the five-year limit? (§ 274.2)

Congress created a penalty under section 409(a)(9) to ensure that States comply with the five-year restriction on the receipt of federally-funded TANF assistance. If we determine that a State has not complied with the five-year time limit during a fiscal year, then we will reduce the SFAG payable for the immediately succeeding fiscal year by five percent of the adjusted SFAG.

Five years is the maximum period of time permitted under the statute for families to receive federally-funded TANF assistance. Therefore, the penalty under this section does not apply if the State exceeds any shorter time limits on the receipt of federally-funded assistance that it may choose to impose. It also does not apply to any time limits on receipt of State-funded assistance or the receipt of non-cash assistance through participation in an allowable activity financed through Federal Welfare-to-Work grant funds.

In defining the requirement, section 409(a)(9) refers to section 408(a)(7). This section provides the circumstances under which assistance may be extended. It provides exceptions to the time limit requirement for minors, hardship, or families living in Indian country or in an Alaskan Native village. Therefore, we will take into account the exceptions described under paragraphs (B), (C), or (D) of section 408(a)(7) when deciding whether the State complied with the five-year time limitation.

We do not intend to hold States immediately accountable for knowing about and verifying all months of assistance received in other States, since we are aware that, in general, States' data processing systems generally are not currently capable of accomplishing interstate tracking of the number of months an individual has received TANF assistance. We will use the information required to be reported by the proposed rules in part 275 to learn whether a State is complying with the five-year time restriction on the receipt of federally-funded assistance.

How can a State avoid a penalty for failure to comply with the five-year limit? (§ 274.3)

In § 272.5, we have proposed general circumstances under which we would find reasonable cause to waive potential penalties. We also propose to consider an additional factor in determining whether there is reasonable cause for failure to meet the five-year limit. The additional factor relates to a State's implementation of the Family Violence Option (FVO) and its provision of temporary waivers of time limits, when necessary, for victims of domestic violence.

We want to encourage States to adopt this amendment and to provide appropriate assistance that reflects the safety and employment-related needs of these families. In adding this reasonable cause factor, we recognize that some of these individuals may need special assistance, at least over the short term. However, we also want to ensure that States make timely, good-faith efforts to help victims of domestic violence become independent. To ensure that States make such efforts, we would limit this reasonable cause provision to States that have implemented the FVO; we reference the criteria we included at § 270.30 to define what qualifies as a good cause domestic violence waiver; and we have set forth a strategy for monitoring the implementation of these provisions.

Under our proposal, as under the work participation penalty, States would have to grant good cause domestic violence waivers appropriately. In the case of time limits, we would only allow States to exclude from their calculations families that had good cause domestic violence waivers and service plans in effect at the time of, or after, the family had reached the 60-month limit on federally-funded assistance. We would not stop the Federal clock for families that receive good cause domestic violence waivers during the five-year period, and we would only recognize waivers that reflected a State assessment that the individual's or family's situation was temporarily preventing them from work.

There are several reasons why we have taken a restrictive approach on this reasonable cause provision.

The most important is that the 20 percent hardship exemption already provides considerable flexibility for States—for example, it only applies to federally-funded assistance, and it excludes certain types of families.

A related reason is that we think the time-limit provision gives States added incentive to work vigorously with

families in making the transition from welfare to work. We want States to have similar motivation to assist victims of domestic violence in becoming independent. If we are too generous in granting reasonable cause for domestic violence cases, we believe there will be a risk that States will divert resources and attention from these cases and unnecessarily prolong their dependence.

We tie the availability of reasonable cause to the family's ability to work because that factor is the most critical in determining whether a family could support itself or would continue to need assistance. Families facing the most serious domestic violence situations are likely to have waivers of work requirements because their lives will be too unstable to expect ongoing work. These same families will be the ones whose situations may take more time to resolve and will have the most trouble becoming self-sufficient within the time limits. Thus, it makes sense to address these cases through reasonable cause. Other cases can be served under the 20 percent hardship exemption or a State-funded program, if they fail to become self-sufficient within five years.

We do not expect that victims of domestic violence will routinely need more than five years of assistance before becoming self-sufficient. However, our proposal recognizes that there may be special circumstances when that is not possible. For example, a woman could suffer recurrent episodes of domestic violence, including one at the end of the five-year period, that prevent her from securing or maintaining a stable work situation. The reasonable cause provision in this section of the proposed rule would give special consideration to States if such situations arose.

Under our proposed rules, a State must substantiate its case for all claims of reasonable cause. We will examine each situation on its own merits and determine whether to assess a penalty on a case-by-case basis.

Must States do computer matching of data records under IEVS to verify recipient information? (§ 274.10)

The Income and Eligibility Verification System (IEVS) was originally established on July 18, 1984 under section 1137. PRWORA created a penalty at section 409(a)(4) requiring the reduction of a State's SFAG for the immediately succeeding fiscal year by up to two percent if the State is not participating in IEVS.

This IEVS provision was intended to improve the accuracy of eligibility determinations and grant computations for the public assistance (AFDC, Medicaid, Food Stamp and SSI) programs. It achieves this goal by expanding access to, and exchanges of, available computer files to verify client-reported earned and unearned income. Specifically, it makes the following files available to the State public assistance agencies: (1) IRS unearned income; (2) State Wage Information Collection Agencies (SWICA) employer quarterly reports of income and unemployment insurance benefit payments; (3) IRS earned income maintained by the Social Security Administration (SSA); and (4) with the passage of the Immigration Control and Reform Act of 1986, immigration status information maintained by the Immigration and Naturalization Service (INS).

Currently, regulations at §§ 205.51 through 205.62 and section 1137(d) describe what is meant by ''participating * * * in the income and eligibility verification system required by section 1137.'' The regulation at § 205.60(a) requires each State to maintain statistics on its use of IEVS. In general, ''participation'' means that a State agency submits electronic requests to IRS, SWICA, SSA and INS for information listed in the preceding paragraph, for all TANF applicants and recipients. IRS, SWICA, SSA and INS provide the State agencies with an electronic response regarding the information requested. The frequency of the request and the timeliness of the response is a function of the agency (IRS, SWICA, SSA and INS) data processing systems design. The State agency worker compares the information provided by IRS, SWICA, SSA and INS to determine the accuracy of client reporting of case circumstances.

How much is the penalty for not participating in IEVS? (§ 274.11)

We are proposing to use an audit pursuant to the Single Audit Act as the primary means of monitoring a State's IEVS participation. Statistics maintained by the State, as required by § 205.60(a), will be one of the sources of information that will be reviewed during the audit. However, we may conduct additional Federal reviews or audits as needed.

Since IEVS has been in existence for more than 12 years, we believe that States have had significant time to become full participants in IEVS. Therefore, we believe it is appropriate to impose the maximum two-percent penalty upon all findings that a State is not participating in IEVS.

What happens if a State sanctions a single parent of a child under six who cannot get needed child care? (§ 274.20)

To support the intent of the statute to move people to work, section 407(e) requires that States reduce or terminate assistance to individuals who refuse to engage in work as required by section 402(a)(1)(A)(ii), as amended by section 5501(b) of Pub. L. 105–33, and section 407. However, section 407(e)(2) gives an exception for single custodial parents with a child under six if the State determines they have a demonstrated inability to obtain needed child care. Parents refusing to participate in work must demonstrate that they could not obtain child care for one or more of the following three reasons: (1) appropriate child care was not available within a reasonable distance from the parent's home or work site; (2) informal child care, by a relative or under other arrangements, was unavailable or unsuitable; and (3) appropriate and affordable formal child care arrangements were unavailable.

Section 409(a)(11)(A) directs the Secretary to reduce by no more than five percent of the adjusted SFAG, the SFAG payable to the State that reduces or terminates assistance to parents who refuse to work because they cannot obtain needed child care for a child under six years of age. The determination that a State is liable for a penalty would be dependent on a finding that the State reduced or terminated assistance to a parent who qualified for an exception under the definitions or criteria that the State developed regarding a parent's ''demonstrated inability'' to obtain needed child care.

We expect that, because of the interrelationship between TANF and CCDF, the TANF staff would work in close coordination with the Lead Agency for child care. Our expectation is that the TANF staff will provide families information about the penalty exception. Under the CCDF proposed rule, ACF would also require that the Lead Agency for the CCDF program inform parents in the CCDF system about the penalty exception to the TANF work requirement and the process or procedures developed by the State by which they can demonstrate their inability to obtain needed child care. ACF would also require the Lead Agency for child care to include the TANF agency's definitions in the CCDF plan for ''appropriate child care,'' ''reasonable distance,'' ''unsuitability of informal care,'' ''affordable,'' and ''child care arrangements.'' Thus, we would expect the TANF agency to share its

definitions of these items with the child care agency. Both agencies would then be able to share them with families whom they may be assisting with child care arrangements.

Following are the factors that ACF would consider in determining if a State violated the exception to the penalty provided at section 407(e)(2):

- Whether the State informs families about the exception to the penalty for refusing to work, including the fact that the exception does not extend the time limit on benefits;
- Whether the State informs families about the process or procedures by which they can demonstrate an inability to obtain needed child care;
- Whether the State has defined and informed parents of its definitions of ''appropriate child care,'' ''reasonable distance,'' ''unsuitability of informal care,'' and ''affordable child care arrangements'';
- Whether the State notifies the parent of its decision to accept or reject the parent's demonstration in a timely manner;
- Whether the State has developed alternative strategies to minimize the amount of time parents are excepted from work requirements due to their inability to obtain needed child care.

For example, a State that uses the services of a child care resource and referral (CCR&R) office might accept a statement from that office noting the unavailability of appropriate or affordable child care. Or, if the refusal to work is due to difficulty in arranging transportation, the State could refer to bus and rail rates and schedules to determine if the appropriateness and/or reasonable distance criteria had been met.

We are not specifying the process or procedures that States should develop, or the documents, if any, States should require. However, we suggest that if States plan to require documents, they select ones that are readily available to families. We recommend that the process or procedures be simple and straight forward. In addition, we recommend frequent contact with parents since the penalty exception does not stay the time limits and there may be fluctuations in the availability of child care services.

We propose to impose the maximum penalty if States do not have a process or procedure in place that enables families, who refuse to work because they are unable to find needed child care, to demonstrate that they have met the guidelines provided by the State. Additionally, we will impose the maximum penalty if there is a pattern of substantiated complaints from parents or organizations verifying that a State has reduced or terminated assistance in violation of the requirement at section 409(a)(11). We will impose a reduced penalty if the State demonstrates that the incidents were isolated or that a minimal number of families were affected. States faced with a penalty under this requirement can claim reasonable cause and/or submit a corrective compliance plan as described in part 272.

What procedures exist to ensure cooperation with child support enforcement requirements? (§ 274.30)

One of TANF's purposes is to provide assistance to needy families so that children may be cared for in their own homes or the homes of relatives. Another is to end the dependence of needy parents on government benefits by promoting job preparation, work, marriage, and parental responsibility. A third is to prevent and reduce the incidence of out-of-wedlock pregnancies and to encourage the formation and maintenance of two-parent families. Child support enforcement provides an important means of achieving all of these goals.

The law has long recognized that paternity establishment is an important first step toward self-sufficiency in cases where a child is born out of wedlock. The earlier paternity is established, the sooner the child may have a relationship with the father and access to child support, the father's medical benefits, information on his medical history, and other benefits resulting from paternity establishment.

Establishment of paternity may also help establish entitlement to other financial benefits, including Social Security benefits, pension benefits, veterans' benefits, and rights of inheritance. Accordingly, establishing paternity and obtaining child support from the non-custodial parent are critical components of achieving independence.

To ensure that a legal relationship protecting the interests of the children is established quickly and in accordance with State law, the State agency (the IV–A agency) must refer all appropriate individuals in the family of a child, for whom paternity has not been established or for whom a child support order needs to be established, modified or enforced, to the Child Support Enforcement Agency (the IV–D agency). Those individuals must cooperate in establishing paternity and in establishing, modifying or enforcing a support order with respect to the child.

The IV–D agency will determine whether the individual is cooperating with the State as required. If the IV–D agency determines that an individual has not cooperated, and the individual does not qualify for any good cause or other exception established by the State, the IV–D agency will notify the IV–A agency promptly. The IV–A agency must then take appropriate action. The IV–A agency may either reduce the family's assistance by an amount equal to not less than 25 percent of the amount that the family would otherwise receive or deny the family assistance under TANF.

What happens if a State does not comply with the IV–D sanction requirement? (§ 274.31)

As stated in section 409(a)(5) of the Act and § 272.1 of these proposed rules, we will impose a penalty of up to five percent of the adjusted SFAG if the IV–A agency fails to enforce penalties requested by the IV–D agency against individuals who fail to cooperate without good cause. We propose to monitor State adherence to this requirement primarily through the single audit process. We further propose that the amount of the penalty will be equal to one percent of the adjusted SFAG for the first year there is such a finding. For the second year, the amount of the penalty will equal two percent of the adjusted SFAG. We will apply the maximum penalty of five percent only if there is such a finding in a third, or subsequent year.

In determining the appropriate penalty for this provision, we took into account the comments made during our consultations with States and other organizations. Although States have been required to establish paternity and enforce other child support provisions for several years, and States already have systems and procedures in place for dealing with these requirements, the division of responsibility between the IV–A and IV–D agencies is now slightly different. Accordingly, the proposal that we gradually increase the amount of the penalty was made to give States the opportunity to make procedural adjustments before they are subject to the full impact of the penalty. We believe that the suggestion has merit and, therefore, are proposing an incremental approach, with reduced penalties for the first two violations, i.e., one percent for the first and two percent for the second. However, since this is not an entirely new requirement, we are proposing to apply the full five percent penalty beginning with the third violation of the provision.

What happens if a State does not repay a Federal loan? (§ 274.40)

Section 406 permits States to borrow funds to operate their TANF programs. States must use these loan funds for the same purposes as apply to other Federal TANF funds. In addition, the statute also specifically provides that States may use such loans for welfare anti-fraud activities and for the provision of assistance to Indian families that have moved from the service area of an Indian Tribe operating a Tribal TANF program. States have three years to repay loans and must pay interest on any loans received. We will be issuing a program instruction notifying States of the application process and the information needed for the application.

Section 409(a)(6) establishes a penalty for States that do not repay loans provided under section 406. If the State fails to repay its loan in accordance with its agreement with ACF, we will reduce the adjusted SFAG for the immediately succeeding fiscal year by the outstanding loan amount, plus any interest owed.

Sections 409(b)(2) and 409(c)(3) provide that States cannot avoid this penalty either through reasonable cause or corrective compliance.

What happens if, in a fiscal year, a State does not expend, with its own funds, an amount equal to the reduction to the adjusted SFAG resulting from a penalty? (§ 274.50)

Section 409(a)(12), as amended by PRWORA, requires States to expend under the TANF program an amount equal to the reduction made to its adjusted SFAG as a result of one or more of the TANF penalties. States are thus required to maintain a level of TANF spending that is equivalent to the funding provided through the SFAG even though Federal funding was reduced as a result of penalties. However, PRWORA did not establish a penalty for a State's failure to meet this requirement. Section 5506(j) of Pub. L. 105–33 further amended section 409(a)(12) to create such a penalty. If a State fails to expend its own funds to pay for State TANF expenditures in an amount equal to the reduction made to its adjusted SFAG for a penalty under § 272.1, the State's SFAG for the next fiscal year will be reduced by an amount equal to not more than two percent of its adjusted SFAG plus the amount that should have been expended (reduced for any portion of the required amount actually expended by the State in the fiscal year).

As discussed in § 272.3, we will monitor closely a State's efforts to replace the reduced SFAG with its own expenditures. A State's investment in its TANF program must not be diminished as a result of actions violative of the TANF requirements. Therefore, if a State fails to make any expenditures in the TANF program to compensate for penalty reductions, we will penalize the State in the maximum amount, i.e., two percent of the adjusted SFAG plus the amount it was required to expend. The penalty will be reduced based on the percentage of any expenditures that are made by the State. For example, if a State were required to replace an SFAG reduction by $1,000,000, but its increase in expenditures equalled only $500,000, its penalty would be equal to two percent of the adjusted SFAG times 50 percent (because $500,000 is 50 percent of $1,000,000), plus the $500,000 it failed to expend as required.

States should note that if they do not expend State-only funds as required, the effect will be that the amounts to be deducted from the SFAG will compound yearly, as the penalty for failure to replace SFAG funds with State expenditures also applies to the penalty at § 272.1(a)(12). We believe that this is appropriate because full resources must be available to ensure that the goals of the TANF program are met.

State expenditures that are used to replace reductions to the SFAG as the result of TANF penalties must be expenditures made under the State TANF program, not under ''separate State programs.'' This requirement is stated in section 409(a)(12). However, as noted in § 273.6, regarding the limits on MOE expenditures, State expenditures made to replace reductions to the SFAG as a result of penalties cannot be counted as TANF MOE expenditures.

In addition, sections 5508(k) and (m) of Pub. L. 105–33 provide that the reasonable cause and corrective compliance plan provisions at §§ 272.4, 272.5, and 272.6 do not apply to the penalty for failure to replace SFAG reductions due to penalties with State expenditures.

Subpart B—What are the Funding Requirements for the Contingency Fund?

Optional Use of the Contingency Fund

In addition to the funding they receive under section 403(a), States may receive funding from the Contingency Fund under section 403(b). The purpose of the Fund is to make additional funds available to States, at their request, for periods when unfavorable economic conditions threaten their ability to operate their TANF programs. For each month of the fiscal year that they meet the eligibility criteria, States may receive up to 1/12th of 20 percent of their SFAG annual allocation. The actual amount of funds a State may realize from the Contingency Fund will vary depending on the level of State expenditures and the number of months that a State is eligible. States eligible in one month may automatically receive a payment for the following month. We have issued a program instruction to States on the Contingency Fund, which provides guidance on the requirements of the Fund as well as the associated MOE requirement.

As noted in the definitions at § 270.30, the term ''Contingency Funds,'' when used in these proposed rules, refers to the Federal funds a State may receive under section 403(b). It does not refer to any required State expenditures.

Unless otherwise indicated, the terms ''MOE requirement'' and ''MOE level,'' when used in this Subpart, refer to the Contingency Fund MOE requirement.

For funding from the Contingency Fund, a State must: (1) be a ''needy State,'' i.e., meet one of two eligibility triggers—unemployment or Food Stamp caseload; (2) submit a request for these funds; (3) meet a maintenance-of-effort level based on 100 percent of historic State expenditures for FY 1994; (4) complete an annual reconciliation after the end of the fiscal year to ensure that contingency funds are matched by the expenditure of State funds above a certain level; and (5) provide State matching funds.

To be eligible for contingency funds under the unemployment trigger, the State's unemployment rate for the most recent three-month period must be at least 6.5 percent and at least equal to 110 percent of the State's rate for the corresponding three-month period in either of the two preceding calendar years. To be eligible for contingency funds under the Food Stamp trigger, a State's monthly average of individuals (as of the last day of each month) participating in the Food Stamp program for the most recent three-month period must exceed by at least ten percent its monthly average of individuals in the corresponding three-month period in the Food Stamp caseload for FY 1994 or FY 1995 had the immigrant provisions under title IV and the Food Stamp provisions under title VIII of PRWORA been in effect in those years.

In general, contingency funds may be used for the same purposes as other Federal TANF funds. However, the Contingency Fund provisions contain several unique requirements that are discussed below.

Unlike the TANF funds provided under section 403(a), contingency funds (provided under section 403(b)) cannot be transferred to the Child Care and Development Block Grant Program (also known as the Discretionary Fund of the Child Care and Development Fund) and/or the Social Services Block Grant Program under title XX of the Act. Section 404(d) permits the transfer of funds received pursuant to section 403(a) only.

Territories and Tribal TANF grantees are not eligible to participate in the Contingency Fund. Section 403(a)(7) provides that only the 50 States and the District of Columbia are eligible.

The TANF MOE requirement is 80 percent (or 75 percent if a State meets its participation rate) of historic State expenditures. The Contingency Fund MOE requirement is 100 percent of historic State expenditures. However, meeting the Contingency Fund MOE requirement is not accomplished by increasing State expenditures by 20 (or 25) percent. The calculation is more complicated because the MOE is calculated differently for purposes of determining compliance with the TANF MOE requirements and determining eligibility for the Contingency Fund. For example, Contingency Fund MOE expenditures must be the expenditure of State funds within TANF and not expenditures made under ''separate State programs.'' Therefore, TANF MOE ''separate program'' expenditures under separate State programs cannot count toward the Contingency Fund MOE requirement. However, TANF MOE expenditures may also count as Contingency Fund MOE expenditures.

Contingency funds are available only for expenditures made in the fiscal year for which the funds were received. Unlike TANF funds under section 403(a), contingency funds are not available until expended.

Section 403(b)(4) provides that the funds are to be used to match State funds for expenditures above a specified MOE level and requires an annual reconciliation to determine if the State is entitled to the amount of funds it has received for the fiscal year. We will use the term ''matching expenditures'' to mean State and Contingency Fund expenditures that exceed the MOE level specified in this section.

''Qualifying State expenditures'' refers to matching expenditures, excluding Contingency Fund expenditures, and the expenditure of State funds made to meet the Contingency Fund MOE requirement.

In this part of the proposed rule, we explain the reconciliation and MOE requirements and the actions that we will take if the State does not remit its contingency funds under the annual reconciliation requirement.

What funding restrictions apply to the use of contingency funds? (§ 274.70)

Annual Reconciliation

Annual reconciliation involves first computing the amount, if any, by which countable State expenditures, in a fiscal year, exceed the State's section 403(b)(6) MOE requirement. If the countable expenditures exceed 100 percent of that level, then the State is entitled to all or a portion of the contingency funds paid to it.

If the State has met its requirement, the amount of contingency funds it may retain is the lesser of two amounts. The first amount is the amount of contingency funds paid to it for the fiscal year. The second amount is its expenditures above its MOE level, multiplied by (1) the State's Federal Medical Assistance Percentage (FMAP) applicable for the fiscal year for which funds were awarded and (2) 1/12 times the number of months during the fiscal year that the State received contingency funds. (Note that if the State was eligible for, and received contingency funds for fewer than 12 months during the fiscal year, the effective rate for contingency funds will be less than its FY FMAP.)

The annual reconciliation provision of section 403(b)(6) is clear that contingency funds are available only to match expenditures that exceed a State's MOE level.

How will we determine 100 percent of historic State expenditures, the MOE level, for the annual reconciliation? (§ 274.71)

Pub. L. 105–33 amended section 403(b), by deleting an alternative MOE requirement.

For the Contingency Fund, historic State expenditures, or MOE level, (i.e., expenditures for FY 1994) include the State share of AFDC benefit payments, administration, FAMIS, EA, and JOBS expenditures. They do not include the State share of AFDC/JOBS, Transitional and At-Risk child care expenditures.

We will use the same data sources and date, i.e., pril 28, 1995, to determine each State's historic State expenditures as we used to determine the TANF MOE requirement. However, we will exclude the State share of child care expenditures for FY 1994. States must meet 100 percent of this MOE level.

Reduction to MOE Level

States should note that we will reduce the MOE level for the Contingency Fund if a Tribe within the State receives a Tribal Family Assistance Grant under section 412. This reduction is provided for in the last paragraph of section 409(a)(7)(B)(iii). For the TANF MOE requirement, we have provided that we will reduce the State's TANF MOE level by the same percentage as a State's SFAG annual allocation is reduced for Tribal Family Assistance Grants in the State for a fiscal year. For example, if a State's SFAG amount is $1,000 and Tribes receive $100 of that amount, the State's TANF MOE requirement is reduced by ten percent. If the same State also receives contingency funds in the same fiscal year, the Contingency Fund MOE level will also be reduced by ten percent.

For the annual reconciliation requirement, what restrictions apply in determining qualifying State expenditures? (§ 274.72)

Section 403(b)(6)(B)(ii)(I) provides that the expenditure of State funds counted toward the Contingency Fund MOE must only be expenditures made under the State program funded under this part. Thus, the State expenditures that the State makes to meet this Contingency Fund MOE level and its ''matching expenditures'' include the expenditure of State funds within TANF only; they do not include expenditures made under ''separate State programs.'' In addition, the provision specifies that the State's expenditures for child care cannot be used to meet the requirement.

What other requirements apply to qualifying State expenditures? (§ 274.73)

Section 403(b)(6)(B)(ii) defines the amounts required to meet the MOE level and ''matching expenditures'' as ''countable'' expenditures under the TANF program. Since these expenditures are covered under title IV-A and are supplemental to the TANF MOE, we believe the same requirements that apply to the TANF MOE should also apply to these expenditures. Therefore, except where they conflict with section 403(b)(6)(B)(ii), we propose that the TANF MOE provisions at section 409(a)(4)(7)(B) apply to State expenditures under the Contingency Fund provision. Thus, to be qualifying State expenditures for Contingency Fund purposes, expenditures would be subject to the following proposed regulations: (1) § 273.2, which discusses types of expenditures (except for paragraph 273.2(a)(2), which pertains to child care); (2) § 273.4, which discusses educational expenditures; and (3) § 273.6, which describes the kinds of expenditures that cannot count as MOE.

When must a State remit contingency funds under the annual reconciliation? (§ 274.74)

After reconciliation, if a State fails to meet the section 403(a)(6) MOE level, it must remit all the contingency funds we paid to it for the fiscal year. If the State does not have sufficient matching expenditures above its MOE level to retain all the funds paid to it, then it must remit a portion of the funds paid to it. The amount the State must remit in this instance is the difference between the amount it received and the amount determined by multiplying: (1) the matching expenditures it made above the MOE level; by (2) the State's FMAP rate for the fiscal year; and (3) 1/12 times the number of months during the fiscal year that the State received contingency funds.

Below we provide an example requiring the remittance of funds.

Assume State expenditures are $103 million (which includes $2.5 million in contingency funds for the six months that the State met the Unemployment or Food Stamp trigger and excludes $2 million in child care expenditures). The required expenditure of State funds to meet the 100 percent MOE level would be $95 million, i.e., $100 million minus $5 million for child care expenditures. Assume the State's FMAP is 50 percent.

In determining if any funds must be remitted, we must subtract from the expenditures made by the State, the MOE level, i.e., $103 million minus $95 million. This difference of $8 million must then be multiplied by the State's FMAP rate for FY 1997. In this example, the FMAP is 50 percent. Thus, $8 million multiplied by 50 percent is $4 million. Next, we must multiply the $4 million by 1/12 times the number of months the State received funding for the Contingency Fund, in this case, six months. The result is $2 million, i.e., the amount of contingency funds the State is entitled to for the fiscal year. However, if a State has received $2.5 million, then it must remit $500,000. A simplified formula is presented below:

$103M − 95M = $8M
$8M x 50% = $4M
$4M x 1/12 x 6 mos. = $2M
$2.5M (Received)—$2M = $500,000
(Amount that must be remitted.)

Under section 5502(e) of Pub. L. 105–33, a State is not required to remit contingency funds until one year after it has failed to meet either the Food Stamp trigger or the unemployment trigger for three consecutive months. Thus, States may retain these funds for at least 14 months after the fiscal year has ended.

For example, FY 1997 ends September 30, 1997. The State fails to meet either trigger for the months of October, November, and December, 1997. The State has until December 31, 1998, to remit the funds.

It is possible that a State will have used the contingency funds it received for expenditures meeting the requirements included in this proposed rule, but still have to return a part of the funds used to make these expenditures because of the formula that determines how much a State may retain. This is evident in the example above where the State had to remit $500,000 of the $2.5 million received even though it had made expenditures above the MOE level. We will not consider use of funds which later must be returned under the reconciliation formula as an improper use of contingency funds since the statute specifies a separate consequence in this situation.

Contingency funds are for use in the fiscal year only; States may not use funds for a fiscal year for expenditures made in either the subsequent fiscal year or a prior fiscal year.

What action will we take if a State fails to remit funds as required? (§ 274.75)

PRWORA established a penalty at section 409(a)(10) for this failure. As amended by Pub. L. 105–33, section 409(a)(10) provides that if a State does not remit funds as required, then the State's SFAG payable for the next fiscal year will be reduced by the amount of funds not remitted. Other amendments in Pub. L. 105–33 eliminated the Secretary's ability to waive this penalty for reasonable cause or corrective compliance. However, the State may appeal our decision to reduce the State's SFAG pursuant to the proposed regulations at § 272.7.

How will we determine if a State has met its Contingency Fund reconciliation MOE level requirement and made expenditures that exceed its MOE requirement? (§ 274.76)

ACF has created a TANF Financial Report, the ACF-196. States will use the ACF–196 to report on their use of Federal TANF funds, including the contingency funds. For the Contingency Fund, States will report ''matching expenditures'' and expenditures also required to meet their MOE level. We will use this report to complete the annual reconciliation after the end of the fiscal year. We will review it to ensure that expenditures reported are consistent with the statute and these proposed rules. Please see the discussion of part 275 for additional information.

Are contingency funds subject to the same restrictions that apply to other Federal TANF Funds? (§ 274.77)

In general, as Federal TANF funds, the same requirements that apply to other Federal TANF funds apply to the Contingency Fund. For example, Federal assistance cannot be paid to a family with contingency funds if the family has already received Federal assistance for 60 months. (See the discussion in § 273.21 on ''Misuse of Federal TANF Funds'' for additional information.) However, contingency funds may not be transferred to the Social Services Block Grant or the Discretionary Fund of the Child Care Development Fund, as section 404(d) authorizes these transfers only for those Federal funds provided under section 403(a).

Meeting FY 1997 MOE Requirements

Unlike the TANF MOE level, the Contingency Fund MOE level for FY 1997 will not be prorated based on the fraction of the year the State was under TANF. Pub. L. 104–327 amended section 116(b)(1)(B)(ii)(II)(aa) and (b) of PRWORA to provide that we will increase the SFAG of any State for FY 1997 in an amount ''that the State would have been eligible to be paid under the Contingency Fund . . . during the period beginning October 1, 1996, and ending on the date the Secretary of Health and Human Services'' deems that the State plan is complete, if the State otherwise would have been eligible for contingency funds but for the fact that it was not under TANF. That is, for all States regardless of the TANF implementation date, the SFAG for FY 1997 may be increased in any month by the amount of contingency funds for which a State would qualify had it been under TANF requirements. The Program Instruction mentioned previously provides additional guidance to States on how their SFAG amounts can be increased for FY 1997. As the increase to the FY 1997 SFAG is a one-time occurrence, we are not regulating on this matter.

In order to compute the amount of this increase for a State meeting this criteria, and to ensure equity among all States, regardless of the dates they elected to come under TANF, we must use the MOE level for all of FY 1997. (For this limited purpose, amounts expended by a State in FY 1997 prior to the date the State came under TANF, i.e., to fulfill a State's matching requirement for AFDC, EA and JOBS, will count toward meeting the State's FY 1997 Contingency Fund MOE requirement.)

Subpart C—What Rules Pertain Specifically to the Spending Levels of the Territories?

Section 103(b) of PRWORA amended section 1108. Section 1108 establishes a funding ceiling for Guam, the Virgin Islands, American Samoa and Puerto Rico. Prior to PRWORA, the following programs authorized in the Act were subject to this ceiling: AFDC and EA under title IV–A; Transitional and At-Risk Child Care programs under title IV–A; the adult assistance programs under titles I, X, XIV, and XVI; and the Foster Care, Adoption Assistance, and Independent Living programs under title IV–E. Funding for the JOBS program, which covered AFDC/JOBS child care, was excluded from the ceiling.

Under the amendments in PRWORA, the funding ceiling at section 1108 applies to the TANF program under title IV–A, the adult programs, and title IV–E programs. Section 1108(b) provides a separate appropriation for a Matching Grant, which is also subject to a ceiling. The Matching Grant is not a new program; rather it is a funding mechanism that Territories can use to fund expenditures under the TANF and title IV–E programs.

We had not previously regulated the provisions of section 1108. However, in light of this new MOE requirement within section 1108, as discussed later, we believe that we need to regulate to clarify the requirements and the consequences if a Territory fails to meet the new section 1108 requirements. We have authority to issue rules on this provision under section 1102, which permits us to regulate where necessary for the proper and efficient administration of the program, but not inconsistent with the Act. (The limit at section 417 does not apply.) In addition, we have prepared a program instruction for the Territories to provide additional guidance on receiving funds under section 1108.

In February 1997, we provided to the Territories: (1) their FAG annual allocations; (2) their TANF MOE levels under section 409(a)(7); (3) their Matching Grant MOE levels; (4) their section 1108(e) MOE levels (which were created by PRWORA, and were subsequently eliminated by Pub. L. 105–33); and (5) a detailed explanation of the methodology and expenditures we used to determine each of these amounts.

If a Territory receives a Matching Grant, what funds must it expend? (§ 274.80)

Section 1108(b) provides that Matching Grant funds are available: (1) to cover 75 percent of expenditures for the TANF program and the Foster Care, Adoption Assistance and Independent Living programs under title IV–E of the Act; and (2) for transfer to the Social Services block Grant program under title XX of the Act or the Child Care and Development Grant (CCDBG) program (also known as the Discretionary Fund) pursuant to section 404(d), as amended by PRWORA and Pub. L. 105–33. However, Matching Grant funds used for these purposes must exceed the sum of: (a) the amount of the FAG without regard to the penalties at section 409; and (b) the total amount expended by the Territories during FY 1995 pursuant to parts A and F of title IV (as so in effect), other than for child care.

Under the first requirement, the Territory must spend an amount up to its Family Assistance Grant annual allocation using Federal TANF or Federal title IV–E funds or funds of its own for TANF or title IV–E programs.

The second requirement establishes an MOE requirement at 100 percent of historic expenditures, based on FY 1995, separate from the TANF MOE requirement, and applicable only if a Territory requests and receives a Matching Grant. Historic expenditures include 100 percent of State expenditures made for the AFDC program (including administrative costs and FAMIS), EA, and the JOBS program. Territorial expenditures made to meet this requirement include Territorial, not Federal, expenditures made under the TANF program or title IV–E programs.

Territorial expenditures used to meet the FAG amount requirement, the MOE requirement and the matching requirement, can only be used for one of these purposes. We believe this is appropriate because our interpretation of the statute is that Congress intended that the provisions on spending up to the FAG amount, meeting the MOE requirement, and meeting the matching requirement be separate requirements.

What expenditures qualify for Territories to meet the Matching Grant MOE requirement? (§ 274.81)

For the TANF MOE, section 409(a)(7) includes specific provisions on what States and Territories may count as ''qualifying State expenditures'' (i.e., expenditures that may count towards the TANF MOE requirement).

However, the statute provides little guidance on what expenditures a Territory may count toward the Matching Grant MOE for IV–A expenditures. Because the Matching Grant is intended to be used for the TANF program, we will apply many of the TANF MOE requirements in part 273, subpart A, to the Matching Grant MOE. These sections are: 273.2 (What kinds of State expenditures count toward meeting a State's annual spending requirement?); 273.3 (When do child care expenditures count?); 273.4 (When do educational expenditures count?); and, 273.6 (What kinds of expenditures do not count?). Section 273.5 (When do expenditures in separate State programs count?) does not apply because section 1108(b)(1)(B)(ii) requires that these MOE expenditures must be expenditures made under the TANF program. Thus, TANF expenditures that are made to meet the Matching Grant MOE requirement must be expenditures made under TANF, not expenditures made under separate State programs. (Because Territories do not receive Matching Child Care funds, the limit on child care expenditures in § 273.3 does not apply.)

Also, Territorial expenditures made in accordance with Federal IV–E program requirements may count toward this MOE requirement. These include the State share of IV–E expenditures and expenditures funded with the State's own funds that meet Federal title IV–E program requirements.

Territories may also count toward their Matching Grant MOE requirement expenditures made under the TANF program that meet the TANF MOE requirement.

What expenditures qualify for meeting the Matching Grant FAG amount requirement? (§ 274.82)

The statute intends that expenditures made to meet this requirement must be TANF or title IV–E expenditures. For TANF expenditures, allowable expenditures made with Federal TANF funds may be used to meet this requirement. These include amounts that have been transferred from TANF to title XX and the Discretionary Fund in accordance with section 404(d). (See § 273.11, which describes the proper uses of Federal TANF funds.) Also, the Territory's own funds, when used for the TANF program, may be used for this purpose. Because IV–A expenditures made with the Territories' own funds must be for the TANF program, it is reasonable that we apply to these TANF expenditures the MOE requirements applicable for the Matching Grant to this FAG amount requirement.

For IV–E expenditures, as with the Matching Grant MOE, expenditures made in accordance with Federal IV–E program requirements may count toward this MOE requirement. These include the Federal share and the Territories' share of IV–E expenditures and expenditures funded with the

Territories' own funds that meet Federal IV–E program requirements.

How will we know if a Territory failed to meet the Matching Grant funding requirements at § 274.80? (§ 274.83)

We are currently developing a separate Territorial Financial Report for the Territories. We will require this report to be filed quarterly; it will apply to all programs subject to section 1108. This report will cover TANF MOE and Matching Grant MOE requirements. For the Matching Grant, Territories will report expenditures claimed under title IV–E and IV–A and the total expenditures (including Federal) made to meet the requirement that they spend up to their Family Assistance Grant annual allocations.

We would not require Territories to file the TANF Financial Report; however, they must report comparable information on the Territorial Financial Report. Furthermore, if one of the Territories fails to file the Territorial Financial Report or to include certain information in that report, it would be treated like a State that fails to file its TANF Financial Report and subject to the penalty for failure to report at § 272.1(a)(3).

What will we do if a Territory fails to meet the Matching Grant funding requirements at § 274.80? (§ 274.84)

The statute does not address the consequences for a Territory if it fails to meet the Matching Grant MOE and the FAG amount requirements. The proposed rule provides that we disallow the entire amount of a fiscal year's Matching Grant if the Territory fails to meet either requirement. This is because the statute provides that the Matching Grant funds are only allowable if both requirements are met. Thus, if the Territory does not meet either one or both of the requirements, it must return the funds to us. We will get the funds back by taking a disallowance action.

A disallowance represents a debt to the Federal government. Therefore, we will apply our existing regulations at 45 CFR part 30. Once we issue a disallowance notice, we can require a Territory to pay interest on the unpaid amount.

What rights of appeal are available to the Territories? (§ 274.85)

The Territory may appeal a disallowance decision in accordance with 45 CFR part 16. As these are not penalties, the reasonable cause and corrective compliance provisions of section 409 do not apply. Section 410, covering the appeals process in TANF, also does not apply.

F. Part 275—Data Collection and Reporting Requirements

General Approach

There are a substantial number of specific data reporting requirements on States under the TANF program. Some of these reporting requirements are explicit, primarily in section 411(a); others are implicit, e.g., States represent the source of information for reports that the Secretary must submit to Congress and for the determination of penalties.

These data requirements support two complementary purposes: (1) they enable determinations about the success of TANF programs in meeting the purposes described in section 401; and (2) they assure State accountability for key programmatic requirements. In particular, they ensure accurate measurement of State performance in achieving the work participation rates in section 407 and other objectives of the Act.

These purposes can only be achieved if data are comparable across States and over time. At section 411(a)(6), the TANF statute provides that, to the extent necessary, the Secretary shall provide definitions of the data elements required in the reports mandated by section 411(a). That this is one of the few places in which the law authorizes regulation by the Secretary reflects the importance of collecting comparable data.

With respect to the first purpose, measuring the success of TANF programs, the data requirements of section 411(a) reflect particular features of the TANF program. States have collected and reported similar data on the characteristics, financial circumstances, and assistance received by families served by the AFDC and JOBS programs for many years. By requiring the collection of similar data under TANF, the statute enables the Congress, the public, and States to observe how welfare reform changes the demographic characteristics and the financial circumstances of, and the self-sufficiency services received by, needy families. In so doing, it facilitates comparisons across States and over time and promotes better understanding of what is happening nationwide—how States are assisting needy families; how they are promoting job preparation, work, and marriage; what is happening to the number of out-of-wedlock births among assisted families; and what kinds of support two-parent families are receiving.

With respect to ensuring accurate measurement of work participation, section 411(a)(1)(A)(xii) specifically requires States to report on the ''information necessary to calculate participation rates under section 407.'' Given the significance of the work rates for achieving the objectives of TANF and for determining whether States face penalties, this is an area where accurate and timely measurement is particularly important.

Our goal in implementing the data collection and reporting requirements of the Act is to collect the data required and necessary to monitor program performance. A secondary goal is to give States clear guidance about what these requirements entail and the consequences of failing to meet the requirements.

At the same time, however, we are sensitive to the issue of paperwork burden and committed to minimizing the reporting burden on States, consistent with the TANF statutory framework. In this context, where applicable, we have considered the comments we received when we proposed the draft Emergency TANF Data Report. (OMB subsequently approved this reporting form, and we issued it on September 30 as TANF–ACF–PI–97–6, Form ACF–198.) However, we welcome additional comments on whether these proposed rules, and appendices, are consistent with our interest in both minimizing reporting burdens and meeting TANF requirements.

External Consultation

Data collection and reporting issues were a critical part of the agenda for the external consultations ACF held during the past fall and winter. We also engaged in consultations when we issued a draft Emergency TANF Data Report for public comment this past summer.

In general, States expressed the view that the statutory provisions on data collection are too onerous. They recommended that ACF limit the burden on States and issue minimum regulatory requirements. However, some State officials acknowledged that they were currently collecting and reporting most of the case-specific data required by the Act as a part of the previous AFDC/JOBS program and the Quality Control reporting system.

Advocates and researchers generally recommended more data collection in order to track program effects on employment and child and family well-being.

Other Federal agencies (e.g., Census Bureau, Bureau of Economic Analysis of the Department of Commerce, Congressional Research Service) have been major users of our past program

data and strongly recommended the continuation of a number of current data elements or collection instruments, e.g., the monthly Caseload Data (or FLASH) Report.

Overview of Part 275

Under this NPRM, States must submit two quarterly reports (the TANF Data Report and the TANF Financial Report) and two annual reports (a program and performance report for the annual report to Congress and, as an addendum to the fourth quarter Financial Report, State definitions and other information).

Most of the information we propose to collect is required by section 411(a). We do not have the authority to permit States to report only some of the data required in section 411(a), and our authority to require expanded data reporting is limited. We are, however, proposing to require some additional data elements necessary to: ensure accountability under section 409(a) (penalties); meet other statutory requirements, e.g., under section 403 (grants to States) and section 405 (administrative provisions); and assess State achievement of program goals, e.g., rankings of State programs under section 413(e).

Before we discuss each of the quarterly and annual reports in detail, we present an overview of the major provisions of this part.

1. We are proposing that each State, in the TANF Data Report—

- Collect and report the case record information on individuals and families and other data, as required in section 411(a).
- Collect and report information to monitor State compliance with the work requirements in section 407, as authorized by section 411(a)(1)(A)(xii).
- Collect and report information to implement the penalty provisions in section 409(a)(9). This penalty applies to time limits on receipt of assistance.
- Collect and report a minimum number of items as break-outs of the data elements specified in section 411(a), such as citizenship status, educational level, and earned and unearned income; and a few additional items necessary to the operation of a data collection system, including Social Security Numbers.
- Collect and report a minimum number of data elements related to child care.

2. We are proposing that each State, in the TANF Financial Report (or, as applicable, the Territorial Financial Report)—

- Collect and report information necessary to estimate the amounts to be paid to a State each quarter pursuant to section 405(c)(1).
- Collect and report information on Federal, State, and MOE expenditures under sections 411 (a)(2), (a)(3), and (a)(5); information for the purpose of implementing section 409(a)(1) (penalty for misuse of funds), section 409(a)(7) (maintenance of effort), section 409(a)(10) (Contingency Fund MOE requirements), section 409(a)(12) (replacement of funds requirement), section 403(b)(4) (Contingency Fund reconciliation); and data to carry out our financial management responsibilities for Federal grant programs under 45 CFR part 92.

3. We are proposing that each State—

- At State option, collect and report data on individuals and families served by separate State MOE programs if a State wishes to receive a high performance bonus, qualify for work participation caseload reduction credit, or be considered for a reduction in the amount of the penalty for failing to meet the work participation requirements.

4. We also propose to—

- Define ''TANF family'' for data collection and reporting purposes only.
- Define ''a complete and accurate report.'' This definition will serve as a compliance standard for implementing the penalty in section 409(a)(2) for failure to submit quarterly reports required under section 411(a).
- Define ''scientifically acceptable sampling method'' as a basis for State sampling systems and reporting disaggregated data in the TANF Data Report.
- Require States to file quarterly reports electronically.

5. We propose to minimize reporting burden by—

- Limiting required reports to a quarterly TANF Data Report, a quarterly TANF Financial Report (or Territorial Financial Report), an annual program and performance report, and an annual addendum to the fourth quarter Financial Report.
- Requiring States to report information only on the demographic and financial characteristics of families applying for assistance whose applications are approved. We will conduct special studies to obtain information on families who apply but are not approved, e.g., families denied, diverted, or otherwise referred. These data are required for purposes of section 411(b).
- Consolidating all aggregate financial and expenditure data into a single financial report. States had to submit three separate financial reports for the prior programs.
- Using the data collected under section 411(a) to conduct annual reviews and rankings of successful State work programs under section 413(d) and adding two data elements in order to conduct rankings of State efforts to reduce out-of-wedlock births, as required under section 413(e).
- Clarifying how States may use sampling to collect and report data as specified in section 411(a)(1)(B).

As an additional aid to States, we will develop a pc-based software package. This package will facilitate data entry and create transmission files for each report. We also plan to provide some edits in the system to ensure data consistency, and we invite States to comment on what sort of edit capability they would like to see in the system. The transmission files created by the system will use a standard file format for electronic submission to ACF.

Finally, in order to provide an opportunity for maximum review and public comment on the reporting requirements, we have attached the proposed quarterly reports (including the specific data elements and instructions) as Appendices A through G to part 275. We will revise these instruments following the comment period on the NPRM and will issue them to States through the ACF policy issuance system. We will not re-publish these appendices as a part of the final rule. However, we will make appropriate changes in the data collection instruments in the Appendices as a result of comments received.

We have submitted copies of this proposed rule and the proposed data reporting requirements to OMB for its review of the information collection requirements. We encourage States, organizations, individuals, and others to submit comments regarding the information collection requirements to ACF (at the address above) and to the Office of Information and Regulatory Affairs, OMB, Room 3208, New Executive Office Building, Washington, DC 20503, ATTN: Desk Officer for ACF.

Section-by-Section Discussion of this Part

The following discussion provides additional background information on, and a discussion of, each section in part 275. We discuss the specific data elements we are proposing, the statutory authority and other bases for their inclusion, the issues and options considered in developing the proposals in this part, and our rationale for taking a particular approach.

What does this part cover? (§ 275.1)

This section provides an overview of the scope and content of part 275. Paragraph (a) specifies the statutory provisions on which our data collection proposals are based. We will reference these statutory citations throughout our discussion of the specific reports, data collection instruments, and data elements in subsequent sections of this preamble.

Paragraph (b) describes the two quarterly reports and the two annual reports we propose to require. We discuss each of these reports and the specific data elements in the reports more fully in § 275.3 and § 275.9 below.

Paragraph (c) describes the optional reporting of case-record data for separate State MOE programs. We discuss our rationale for this proposal more fully in the discussion on § 275.3(d) below so that States may understand how we will evaluate certain benefits and options in deciding whether to report MOE case-record data.

Paragraph (d) describes the other provisions we propose to cover in part 275. These are the use of sampling to meet the data collection and reporting requirements, electronic submission of reports, due dates, and our plan to implement the penalty for failure to submit a timely report, as required by section 409(a)(2). You can find a more complete discussion of these matters in §§ 275.4–10.

Paragraph (e) calls attention to the eleven Appendices at the end of part 275. These Appendices contain the proposed data collection instruments and instructions for all of the quarterly reports. The Appendices also contain a summary of sampling specifications and three reference charts that link each data element in the three sections of the TANF Data Report to its specific statutory authority and our rationale for collecting these data. We have included these materials in order to obtain more informed comment on the proposed reporting requirements.

Although the Act requires that the reporting requirements for States under section 411 also apply to Indian tribal grantees, we will address data collection and reporting by Tribes in a separate NPRM that will deal with the full range of Tribal issues.

We will also address additional data collection requirements, if any, to implement the high performance bonus in a separate NPRM scheduled to be published later this year.

What definitions apply to this part? (§ 275.2)

The data collection and reporting regulations rely on the general TANF definitions at part 270.

In this part, we are proposing one additional definition—for data collection and reporting purposes only—a definition of ''TANF family.'' This definition will apply to data collection for both the TANF program and any separate State programs.

The law uses various terms to describe persons being served under the TANF program, e.g., eligible families, families receiving assistance, and recipients. Unlike the AFDC program, there are no persons who must be served under the TANF program. Therefore, each State will develop its own definition of ''eligible family,'' to meet its unique program design and circumstances; similarly, each State will have its own definition of ''eligible family'' for State MOE programs.

We do not expect coverage and family eligibility definitions to be comparable across States. Therefore, we have proposed a definition that will enable us to better understand the different State programs and their effects. We are proposing that the definition of ''TANF family'' start with the persons in the family who are actually receiving assistance under the State program. (Any non-custodial parents participating in work activities will be included as a person receiving assistance in an ''eligible family'' since States may only serve non-custodial parents on that basis.) We, then, would include three additional categories of persons living in the household, if they are not already receiving assistance. These three additional categories are:

(1) Parent(s) or caretaker relative(s) of any minor child receiving assistance;

(2) Minor siblings of any child receiving assistance; and

(3) Any person whose income and resources would be counted in determining the family's eligibility for or amount of assistance.

We believe information on these additional individuals is critical to understanding the effects of TANF on families and the variability among State caseloads, e.g., to what extent are differences due to, or artifacts of, State eligibility rules.

- We need information on the parent(s) or caretaker relative(s) (i.e., an adult relative, living in the household but not receiving assistance, and caring for a minor child) to understand the circumstances that exist in no-parent (e.g., child-only) cases not covered by key program requirements, such as time limits and work requirements.
- We need information on minor siblings in order to understand the impact of ''family cap'' provisions.
- We also need information on other persons whose income or resources are considered in order to understand the paths by which families avoid dependence.

We considered alternative terms on which to base TANF data collection such as the ''TANF assistance unit'' or ''TANF reporting unit.'' However, as participants in the external consultation process pointed out, these terms no longer have a commonly understood meaning, particularly as States re-design their assistance and service programs.

For research and other purposes, there was interest in collecting data on a broader range of persons in the household, e.g., any other person living in the household such a grandmother or a non-marital partner of the mother.

We determined that we should limit reporting to those categories of persons on whom the States will gather data for their own purposes and for which information will be directly relevant to administration of the TANF program.

In the interest of greater comparability of data, we also considered defining terms such as ''parent,'' ''caretaker relative,'' and ''sibling.'' We chose not to define these terms because we were concerned that our data collection policies could inadvertently constrain State flexibility in designing their programs. We believe that variation among State definitions in these areas will not be significant and will not decrease the usefulness of the data.

We believe this definition of family will not create an undue burden on States since these additional persons are either all individuals who are a part of an aided child's immediate family or whose income or resources the State already considers in determining eligibility.

We offer one clarifying note regarding data collection in relation to non-custodial parents. As we indicated in the discussion of part 271, the provision of work activities to a non-custodial parent need not cause a State to consider the family a two-parent family for the purposes of the work participation rate. States could define two-parent families as those with two parents living in the same household.

Finally, we want to emphasize that we have proposed this definition of ''TANF family'' for reporting purposes only. Our aim is to obtain data that will be as comparable as possible under the statute, and, to the extent possible, over time. Some comparability in data collection is necessary for assessing program performance; understanding

the impact of program changes on families and children; and informing the States, the Congress, and the public of the progress of welfare reform.

What reports must the State file on a quarterly basis? (§ 275.3)

We are proposing in paragraph (a) to require that each State must file two reports on a quarterly basis—the TANF Data Report and the TANF Financial Report (or, as applicable, the Territorial Financial Report). We are also establishing the circumstances under which a State may opt to submit a quarterly TANF–MOE Data Report.

The TANF Data Report consists of three sections whose contents are discussed below. You will find these proposed sections in their entirety in Appendices A–C to this part. You will find the proposed TANF Financial Report in Appendix D and the three sections of the proposed TANF–MOE Report in Appendices E–G. (The Territorial Financial Report is under development.)

By publishing these data collection instruments in the NPRM, we are providing the public with an opportunity for a thorough review of the specific data elements proposed to be collected. We anticipate that this opportunity for an in-depth public review of these instruments will result in more useful and informed suggestions and recommendations.

Section 411(a)(1)(A)(i)–(xvii) authorizes monthly collection and quarterly reporting of a specified list of more than 30 data elements. Sections 411(a)(2)–(5) also authorize quarterly reports on administrative costs, program expenditures for needy families, non-custodial parents' participation in work activities, and transitional services to families who no longer receive assistance due to employment.

The data elements specified in section 411(a) represent the overwhelming majority of the data elements we are proposing to collect in the TANF Data Report and the TANF–MOE Report. Some section 411(a) data elements are also included in the TANF Financial Report in addition to information required by section 403(b)(4) (Contingency Fund reconciliation requirements), section 405(c)(1) (computation of payments to States), section 409(a)(10) (Contingency Fund MOE requirements), section 409(a)(12) (failure to expend additional State funds to replace grant reductions), and information to carry out our financial management and oversight responsibilities.

Where we have added data elements beyond those explicitly stated in section 411(a), we explain our rationale for their inclusion.

As a further aid to public analysis and comment, we have attached three statutory reference tables that correspond to the three sections in the TANF Data Report. These tables list each data element we are proposing to collect and the applicable statutory citation or other rationale for its collection. See Appendices I–K.

TANF Data Report: Disaggregated Data—Sections One and Two (§ 275.3(b)(1))

Paragraph (b)(1) of this section proposes to require that each State must file the disaggregated case record information, as specified in section 411(a), on: (1) families receiving TANF assistance (Section One); and (2) families no longer receiving TANF assistance (Section Two). (See Appendices A and B respectively for the specific data elements.)

The information we propose to be collected includes identifying and demographic information; data on the types and amount of assistance received under the TANF program; the reasons for and amount of any reductions in assistance; data on adults, including the Social Security Number, educational level, citizenship status, work participation activities, employment status, and earned and unearned income; and data on children, including the Social Security Number, educational level, and child care information.

The statute requires that, in her Annual Report to Congress, the Secretary must report on the financial and demographic characteristics of families leaving assistance. However, it does not directly specify the data elements that States must submit. In specifying the data elements in Section Two of the TANF Data Report (for families no longer eligible), we borrowed heavily from the data elements specified for families receiving TANF assistance. We have assumed that States will not have a great deal of difficulty collecting these data because: (1) they are reporting similar data for TANF cases; (2) we only expect States to collect these data at the time the families are leaving the rolls; and (3) we substantially reduced the total number of elements States must report. However, we invite comments on whether the value of the data required in this section (e.g., in terms of preparing the Annual Report, conducting research, and tracking the impacts of State policies) justifies the burden on States. We encourage commenters to be specific about the value and burden of individual data elements.

Appendix A contains 99 data elements, most of which are required to be reported by section 411(a)(1)(A). As indicated above, we have prepared, at Appendix I, a list of each data element in section one of the TANF Data Report (Appendix A) and its statutory basis or other rationale for its inclusion. The data elements not specified in section 411(a) are discussed more fully below.

a. *Administration of a data collection system.* The following items are not required by statute, but they are necessary to, and implicit in, the administration of a data collection system:

1. State FIPS Code
2. Reporting Month
3. Sampling Stratum
4. Family Case Number
5. Sample Case Disposition

Other proposed data elements necessary for the administration of the data collection system and our rationale for their inclusion are as follows:

6. *ZIP Code*—This information is readily available and is needed for geographic coding and rural/urban analyses.

7. *Family Affiliation*—We need this information to identify which persons in the family are receiving assistance in order to monitor work participation, receipt of assistance, and time limits. We also need this information to understand the relationship between the members of the household.

8. *Social Security Number*—This information is also readily available. States use Social Security Numbers to carry out the requirements of IEVS. (See sections 409(a)(4) and 1137.) This element will enable us to track recipients who move or become part of a different family. We also need this information for research on the circumstances of children and families as required in section 413(g).

9. *Gender*—This is a standard demographic data element. The information could be collected under a relationship element (e.g., father, mother, brother). However, by using this single element, the coding is simpler; it is easier to report; and, thus, is less burdensome.

b. *Break-outs.* We are proposing to collect additional information as break-outs of certain single data elements in section 411(a). Some break-outs are required by section 411(a). See ''Amount and Type of Assistance'' (10 items), ''Reason for and Amount of Reduction in Assistance'' (11 items), ''Adult Work Participation Activities'' (14 items), and ''Educational Level'' (two items).

Other specific break-outs not specified in section 411(a) but that we believe States have available and that are necessary for comparability of data are:

1. *Earned income.* Two break-outs ask for the dollar amount of wages, salaries and other earnings and the amount of EITC.

2. *Unearned income.* Five break-outs ask for the amount of Social Security benefits, SSI benefits, Worker's Compensation benefits, child support, and other.

3. *Subsidized housing.* Data element #13 asks for an indication of the source of the subsidy, e.g., public housing, HUD rent subsidy, or other.

4. *Food Stamps.* Data element #15 asks for the type of Food Stamps assistance, i.e., allotment, cash, or subsidy.

On these last two items, in particular, we are interested in receiving comments on whether the value of the break-out information (e.g., in terms of enabling comparisons with historical information, conducting research, and assessing dependency) justifies the additional reporting burden on States.

One final break-out area is *Citizenship.* We propose to require nine break-outs of the data element ''citizenship'' in section 411(a)(1)(A)(xv). We believe it is necessary to track the proper use of TANF funds in terms of the types of aliens served to ensure that TANF benefits are going to eligible aliens. Section 409(a)(1) provides for a penalty if funds are used in violation of the requirements of the law. PRWORA created complex and potentially confusing eligibility criteria for different types of qualified aliens; the requirements are made even more confusing by the imposition of certain time limits in terms of United States residency for certain groups of qualified aliens, such as refugees, and by the time limit on receipt of TANF assistance for everyone. We also believe States will need the information in the break-outs to carry out their eligibility determinations.

c. *Data elements necessary to implement other sections of the Act.* The following items are not required by section 411(a) but are necessary to implement other statutory requirements:

1. *Cooperation with child support*—Section 409(a)(5). (Data element #94)

2. *Time limits for receipt of assistance*—Section 409(a)(9). (Data elements #44 and #62–65)

3. *New Applicants*—Section 411(b). (Data element #10)

4. *Amount of the family's cash resources*—Section 411(b). (Data element #21)

d. *Child Care.* Five data elements are identical to the child care information required to be reported on families served by the Child Care Development Fund (CCDF). The purpose of this collection of information is to track child care provided under TANF in relation to a State's provision of CCDF child care. (Child care provided under CCDBG with funds transferred from TANF is captured through the CCDF program, not TANF data collection.) It is also necessary for assessing program performance and the total financial commitment a State is making to achieve the work objectives of the Act.

The second section of the TANF Data Report, Appendix B, contains 46 elements applicable to families no longer receiving assistance. The data elements in Appendix B are identical to those in Appendix A except that some elements are omitted as not applicable and others consist of a single data element with no break-outs. See Appendix J for the statutory reference table applicable to Appendix B.

TANF Data Report: Aggregated Data—Section Three (§ 275.3(b)(2))

Paragraph (b)(2) of this section proposes that each State must file quarterly aggregated information. (See Appendix C for the list of data elements.)

The data elements in this section of the TANF Data Report cover families receiving, applying for, and no longer receiving TANF assistance. They include total figures on the number of approved and denied applications; the number of no-parent (e.g., child-only), one-parent, and two-parent families; the number of child and adult recipients; the number of minor child heads-of-households; the number of out-of-wedlock births; the number of births; the number of non-custodial parents participating in work activities; the number of closed cases; and the total amount of TANF assistance provided.

This third section of the TANF Data Report contains 19 data elements. Ten of the 19 are specified in, or are break-outs of data elements in, section 411(a).

Technical amendments to PRWORA under section 5507 of Pub. L. 105–33 added a new section 411(a)(6) to the TANF data collection and reporting requirements. This new paragraph (6) requires reports on ''the number of families and individuals receiving assistance . . . (including the number of 2-parent and 1-parent families).'' It also asks for the total dollar value of such assistance received by all families.

We propose two break-outs for these new data elements in section 411(a)(6). As a break-out under the ''number of families,'' we are proposing to collect data on the number of no-parent families and the number of minor-child heads-of-household. As a break-out under ''number of individuals,'' we are proposing to require data on the number of adult recipients and the number of child recipients.

In addition to the statutorily-based data elements, we have added nine data elements. We are proposing to require three data elements (#1–3) as necessary to administer a data collection system and two data elements (#5 and #19) as necessary to verify and validate the quality and consistency of the disaggregated data. Because we allow States to report disaggregated data on a sample basis, we need certain aggregated data to test the reliability of estimates and the representativeness of the disaggregated sample data.

Finally, two data elements (#4 and #6) are required by section 411(b) for the report to Congress, and two elements (#17–18) are required by section 413(e) for the annual rankings of States related to their efforts to prevent out-of-wedlock births. See Appendix K for the Statutory Reference Table for Appendix C.

This section of the TANF Data Report is made up of aggregate data almost all of which was previously reported under the AFDC and JOBS programs. We have: consolidated the data elements in the previously required monthly FLASH Report and two quarterly aggregated data reports—the 3637 Report and the 3800 Report—into a single quarterly report; eliminated the monthly report; and greatly reduced the number of data elements. We believe the States will welcome the reduced burden in this area.

In addition, we have further minimized the reporting burden on States by how we propose to collect ''demographic and financial characteristics of families applying for assistance.'' In interpreting this requirement in section 411(b), we propose to collect information, not on all families who apply, but only on those whose applications are newly approved. We propose to collect any additional information that is needed on applicants who are not approved through a special study or studies.

We adopted this approach because the question of ''what is an application'' and ''what is a denied application'' (as opposed to a referral or a diverted family, for example) is often very difficult to determine. If we were to require data on all applications, we believe that considerable portions of the

demographic and financial data would be incomplete or entirely missing. We also believe that there would be extraordinary variability in the information provided across States. This variability would have an adverse impact on the quality of any estimates based on these data and on our ability to interpret the data.

Also, data collection on all applicants could be very burdensome on States as they would need to create an additional sample frame to select samples for all applications and to collect data on families who are not receiving assistance. These families may be difficult to locate and unwilling to cooperate.

As noted earlier, in our external consultation, users of these data expressed strong support for continued collection of this information.

We received recommendations that additional data elements should be added. In many instances, we agreed with the importance of the data, but we could not justify its necessity for the administration of the program, given our limited regulatory authority.

We also considered various options in how to design a data collection system to minimize the burden on States. The statutory requirements include monthly collection, quarterly reports, annual reports, and other periodic activities (e.g., annual rankings of States, application of penalties). We have tried to simplify these requirements in our proposal to include all data collection in the quarterly TANF Data Report and the TANF Financial Report (or, as applicable, the Territorial Financial Report), including a fourth quarter addendum, and one annual program and performance report. Since the data being collected apply to individuals and families, it is easier for a State to modify its current data collection system than to set up new systems with different periodicities. We believe that: (1) States will be able to accommodate to this proposed system of quarterly reports, one annual addendum to the quarterly reports, and one annual report; and (2) by this simplification of data collection and reporting, we will have come a long way to increasing the completeness and accuracy of the data.

TANF Financial Report (§ 275.3(c))

We propose in paragraph (c) to require each State to file a TANF Financial Report quarterly. See Appendix D for the content of the TANF Financial Report and the content of the addendum that must be filed with the fourth quarter TANF Financial Report as described in § 275.9.

We will be issuing a separate Territorial Financial Report for the Territories because they have different funding sources and different MOE requirements. The Territorial Financial Report will incorporate the requirements of the TANF Financial Report—including the data elements, fourth quarter addendum, and filing deadlines. Also, if one of the Territories fails to file the Territorial Financial Report or to include certain information in that report, it would be treated like a State that fails to file its TANF Financial Report and subject to the penalty for failure to report at § 272.1(a)(3).

We propose that States report information in two broad categories—''Expenditures on Assistance'' and ''Expenditures on Non-Assistance''—because we need to track the reasonableness of the definition of assistance for Federal funding and State MOE purposes. These data will assist us in understanding the extent to which recipients of benefits and services are covered by program requirements. As we indicated in the discussion of the definition of ''assistance'' in § 270.30, we want to make sure that our definition does not have the effect of undermining the objectives of the Act. The data will also be important in helping us validate the data received on disaggregated cases.

The TANF Financial Report is designed to serve multiple purposes:

(1) To gather data required under section 411 (a)(2), (a)(3), and (a)(4), i.e., data on administrative costs, State expenditures on programs for needy families, and transitional services for families no longer receiving assistance due to employment;

(2) To gather quarterly estimates for Federal TANF grants as authorized by section 405(c)(1);

(3) To monitor expenditures and closeout TANF grants for a fiscal year, in accordance with standard financial reporting requirements for federal grant programs;

(4) To determine if a State has met its TANF MOE requirement under section 409(a)(7);

(5) To determine compliance with the limitations on administrative costs as specified in section 409(a)(7)(B)(i)(I)(dd);

(6) To accomplish the annual reconciliation for the Contingency Fund under section 403(b);

(7) To assure compliance with section 409(a)(1) (misuse of funds), section 409(a)(10) (Contingency Fund MOE requirements), and section 409(a)(14) (State reduction of assistance for recipients refusing without good cause to work; and

(8) To monitor the expenditure of additional State funds to replace grant reductions.

With respect to MOE and Contingency funds, TANF MOE and Contingency Fund reporting for a fiscal year culminate with the submission of the fourth quarter financial report for the fiscal year. However, because Federal TANF funds granted for a fiscal year are available until expended, States must continue reporting on State expenditures of Federal funds each quarter until they have expended all their funds.

Paragraph (c)(4) proposes to require that if a State is expending funds received in a prior fiscal year, it must file a separate quarterly TANF Financial Report (or, as applicable, Territorial Financial Report) for each fiscal year that provides information on how that fiscal year's funds were expended.

For example, if a State reserves FY 1997 funds through the second quarter of FY 1999, the State must submit quarterly reports on FY 1997 funds with the final report covering the second quarter of FY 1999. During this same period, a State must submit its reports for FYs 1998 and 1999.

The MOE expenditure information in the TANF Financial Report is not an optional reporting requirement, as is the information on families served by separate State programs in the TANF Data Report. States must report such expenditure data as a part of the evidence required to assure that State MOE expenditures are ''qualified.''

OMB has approved the use of an interim financial reporting form (#0970–0165) on an emergency basis until it approves the TANF Financial Report.

We have not attached a statutory reference chart for Appendix D. With a few exceptions, the data elements in the TANF Financial Report are required by section 411, are needed to determine if a State has met the TANF MOE requirements under section 409(a)(7), and are necessary to carry out our financial management responsibilities under 45 CFR part 92.

The exceptions and our rationale for their inclusion are as follows:

1. *Expenditure data on cash assistance, work subsidies and activities, and child care.* These expenditure categories provide information to assess a State's use of funds (see penalty sections 409(a)(1) and 409(a)(7)) and are a basis for determining a State's total commitment to work (see sections 409(a)(3) and 409(a)(9)).

2. *Expenditures on systems.* For Federal TANF funds, the statute excludes systems costs from the 15 percent limit on administrative costs. The statute is silent as to whether such costs are within the 15 percent limit on administrative costs for State MOE expenditures. We are proposing that systems costs may also be excluded from the State calculation. Attaching information on State systems expenditures will enable us to judge the implications of our proposal to exclude such costs from the administrative cost cap applicable to State funding.

3. *Fourth Quarter Addendum.*

• *State reporting of families excluded from work rates and time-limit calculations under the State definition of families receiving assistance.*

States must annually report the number of families excluded from the overall work participation rate (at § 271.22), the two-parent rate (at § 271.24), and the time-limit calculations (at § 274.1), together with a description of the family circumstances that explains why they were excluded. The purpose of this information is to provide a national perspective as to whether States are avoiding critical provisions of the law by creating child-only cases.

• *State definition of work activities.*

This State definition must also be reported annually. We need this information to monitor the work participation requirements in section 407. See also our preamble discussion in § 271.30, ''What are work activities?''

• *Description of transitional services.*

This description of transitional services provided to families that are not receiving TANF assistance because of employment implements section 411(a)(5).

• *Description of how a State will reduce the amount of assistance payable to a family when the individual refuses to engage in work.*

This description of how a State carries out pro rata (or more) reductions provides information that is necessary to implement section 409(a)(14). See also § 271.54 and 55.

• *Descriptive and expenditure-related information on the State's separate MOE program.*

This information is necessary to carry out requirements of section 409(a)(7). See the discussion of § 273.7 for additional details.

TANF–MOE Data Report (§ 275.3(d))

Paragraph (d) proposes to require that a State must report case record data on separate MOE programs if it wishes to be considered for certain benefits and options under the Act.

The data elements we are proposing to collect on separate State programs are identical in content to but fewer in number than the demographic and work activity data we have proposed in paragraphs (b) and (c) of this section. (See Appendices E, F, and G.)

We are proposing to collect information on separate State programs in order to help ensure that State decisions to establish such programs do not undermine the work provisions of the new law, undercut Congressional intent to share child support collections between the Federal and State governments, or have other negative consequences.

We believe that it is not possible to judge the impacts and accomplishments of the State's TANF program by looking only at how a part of the State's program is operating. We need information on the separate State programs so that we can better identify which States are truly successful in serving needy families, promoting work, and meeting other legislative goals.

For example, a State could score well on a measure of its TANF performance by relegating the most-difficult-to-serve families to a separate State program in which they received no self-sufficiency services. In reality, this State would be performing more poorly than a State that achieved the same level of success with its TANF population, but served all families through its TANF program. Similarly, a State that ''reduced'' its TANF caseload by simply splitting its program into a TANF program and a separate State program should not get credit for caseload reduction in determining its work participation rate.

Thus, collection of data on separate State programs would give us the capacity to look broadly at issues of work effort, caseload reductions, family structure, and other measures of performance.

We plan to look at overall participation levels, including participation by families receiving assistance under separate State programs, to assess how well States are meeting their responsibilities to help families toward self-sufficiency. These overall participation levels could affect the size of a State's penalty if it does not meet the rates at section 407. However, we base our initial determination that a State is subject to a penalty under section 407 on the work participation rates of families receiving TANF assistance, not these overall participation levels.

The differences between the TANF Data Report and the TANF–MOE Data Report are minor. Appendix A contains six data elements not included in Appendix E. They are: Tribal Code, Amount of Monthly Child Care Co-Payment, Is the TANF Family Exempt from the Federal Time Limit Provision, Type of Child Care, Total Monthly Cost of Child Care, and Total Monthly Hours of Child Care Provided During the Reporting Month.

Appendix B contains one data element not in Appendix F—Tribal Code Number. Appendix C contains four data elements that do not appear in Appendix G. They are: Tribal Code, Total Number of Applications, Total Number of Approved Applications, and Total Number of Denied Applications.

The statutory authority and rationale for these data elements are found in Appendices I–K.

When are quarterly reports due? (§ 275.4)

Paragraph (a) of this section implements section 409(a)(2), as amended by Pub. L. 105–33, which requires that States file quarterly reports within 45 days following the end of the fiscal quarter or be subject to a penalty.

Paragraph (c) implements section 116 of PRWORA in defining the effective date of the reporting requirements for individual States, depending on the date they began implementation of the TANF program. Section 116 states that the reporting requirements shall take effect on the later of July 1, 1997, or six months after the Secretary receives a TANF Plan from the State. For operational purposes, we interpret this to mean that the reporting period begins six months after the State implements the program.

For example—

If a State implements TANF	Reporting period	Reports due
March 1, 1997	September 1, 1997–September 30, 1997	11/14/97
April 10, 1997	October 10, 1997–December 31, 1997	02/14/98
July 1, 1997	January l, 1998–March 31, 1998	05/15/98

These effective dates apply to the TANF Data Report and the TANF Financial Report, including the annual addendum to the fourth quarter TANF Financial Report.

Paragraph (b) proposes that a State may collect and submit its quarterly TANF–MOE Data Reports at the same time as it submits TANF Data Reports, or it may submit them at the time it seeks to be considered for a high performance bonus, a caseload reduction credit, or a reduction in the penalty for failing to meet work participation requirements, as long as the data submitted are for the full period on which these decisions will be based.

Although we believe that it will be easier for States (and State data collection systems) to file all data reports at the same time, this additional flexibility may be useful for some States.

May States use sampling? (§ 275.5)

This section implements section 411(a)(1)(B) in permitting the States to meet the disaggregated data collection and reporting requirements by submitting data based on the use of a scientifically acceptable sampling method approved by us. States may not submit aggregated data based on a sample, e.g., the TANF Financial Report.

We have proposed a definition of ''scientifically acceptable sampling method'' in paragraph (b) of this section. This definition reflects generally acceptable statistical standards for selecting samples and is consistent with existing AFDC/JOBS statistical policy. (See Appendix H for a summary of the sampling specifications.)

At a later date we will issue the TANF Sampling and Statistical Manual that will contain instructions on the approved procedures and more detailed specifications for sampling methods.

Must States file reports electronically? (§ 275.6)

We are proposing to require that States must submit all quarterly reports—the TANF Data Report, the TANF Financial Report (or, as applicable, the Territorial Financial Report), and the TANF–MOE Data Report—electronically.

We are proposing electronic submission for several reasons. For each collection of information, OMB regulations at 5 CFR 1320.8 require Federal agencies to evaluate whether the burden on respondents can be reduced by use of automatic, electronic, mechanical, or other technological collection techniques. This Department has for many years encouraged programs and grantees to use such non-paperwork approaches to meet data collection requirements.

All States submitted data reports electronically under the prior AFDC, JOBS, and the Quality Control data reporting systems. In external consultation meetings, State representatives supported electronic submission of both data and financial reports. Therefore, we conclude that continuing electronic submission of data reports will not be a burden on States and that requiring electronic submission of all data and financial reports will reduce paperwork and administrative costs, be less expensive and time-consuming, and be more efficient for both States and the Federal government.

As noted earlier, we will develop and provide for State use a pc-based software package to facilitate data entry and create transmission files for each quarterly report.

We are considering developing, when feasible, an electronic reporting format for the annual addendum to the TANF Financial Report and the annual program and performance report as required in § 275.9. We would appreciate comments and suggestions on the desirability and usefulness of this approach.

How will we determine if the State is meeting the quarterly reporting requirements? (§ 275.7)

In order to set a standard of compliance for monitoring and penalty purposes, we have proposed definitions of what will constitute ''a complete and accurate report'' for disaggregated data reports, for aggregated data reports, and for the TANF Financial Report (and, as applicable, the Territorial Financial Report). We will use these definitions in determining if the State is subject to any of the penalties for which we are collecting data. (See § 275.8 of this part for the specific circumstances under which we will impose the penalty for failure to report complete, accurate, and timely data under section 409(a)(2).)

We will also use these definitions for monitoring the completeness and accuracy of the data and financial reports under our authority in section 411(a)(1)(B) to verify the quality of data submitted.

We believe these definitions are necessary to ensure that we receive data reports that are in good order. We considered not providing a definition or a standard of compliance, but rejected that option because the data reports are so critical to our ability to provide information to Congress, States, and the public on how welfare reform is proceeding as well as to assess and hold States accountable for program performance.

In the past, we have had problems obtaining complete and accurate data. Errors have been common, thus creating substantial burdens for ACF (in conducting edit checks) and for States (in revising and correcting their reports). Because of errors and omissions, we have also experienced significant delays in reporting national program data to States, Congress, and the public. We welcome suggestions and recommendations on ways to help assure more accurate data reporting without creating undue burden on States.

We are concerned about complete, accurate, and timely data for another reason. We are considering posting information from the quarterly TANF Data Reports on the Internet for access by other Federal agencies, legislators, researchers, the public, and others for a variety of analytic and evaluation purposes. Posted data would allow States and others to make comparisons among State programs, accomplishments, outcomes, and levels of performance. If we put these data in the public domain, the need for completeness and accuracy is much greater because the likelihood increases that the numbers would be used or published without appropriate caveats or consideration of their limitations. In addition, posting data that could not be relied upon defeats the purpose of making the data more accessible.

The standards for ''completeness and accuracy'' that we are proposing for the TANF Financial Report (and Territorial Financial Report) in paragraph (d) apply to all expenditures reported; i.e., Federal TANF, State TANF, Contingency Fund, and State MOE expenditures. We propose that these expenditures be made in accordance with the requirements at 45 CFR 92.20(a). Under this provision, all expenditures must be traceable, so that we can determine if funds have been used properly, and made in accordance with Federal and State laws and procedures. For the ''completeness'' standard, we expect that States will report expenditures for all data elements for which expenditures are made in the quarter.

Also in paragraph (b), the proposed definition of ''a complete and accurate report'' includes the statement that ''where estimates are necessary, the State uses reasonable methods to develop these estimates.'' We plan to review each State's methods and procedures for developing these estimates through on-site verifications or technical assistance visits.

Finally, regarding verification of data, the Secretary has the authority under section 411(a)(1)(B) to verify the quality of the data submitted by States. We will be exploring several approaches to verification of data, including audits and reviews. We also remind States, in paragraph (f), that backup documents need to be retained to support the information in any report and for verification purposes.

Under what circumstances will a State be subject to a reporting penalty for failure to submit quarterly reports? (§ 275.8)

In order to ensure that States file required reports, section 409(a)(2)(A) requires us to impose a penalty on a State if the State has not filed the required report within 45 days following the last month of a fiscal quarter. However, section 409(a)(2)(B) allows us to rescind the penalty if the State files the report before the end of the quarter immediately following the quarter for which the report was required. These provisions are reflected in paragraphs (c) and (d) of this section.

In paragraph (a), we propose to impose the penalty only with respect to the two quarterly reports—the TANF Data Report and the TANF Financial Report (or Territorial Financial Report), including the fourth quarter annual addendum—and only under one or more of the following five circumstances:

- The State fails to file the TANF Data Report or the TANF Financial Report (or Territorial Financial Report) on a timely basis.
- The disaggregated data in the TANF Data Report is not accurate or does not include all of the data elements required by section 411(a) (other than section 411(a)(1)(A)(xii) regarding work participation requirements) or the nine additional data elements necessary to carry out the data collection system requirements.
- The aggregated data in the TANF Data Report does not include complete and accurate information on the ten data elements required by section 411(a) and the five data elements necessary to carry out the data collection system requirements and verify and validate disaggregated data.
- The TANF Financial Report (or Territorial Financial Report) does not contain complete and accurate information on total expenditures and expenditures on administrative costs and transitional services, as required by section 411(a).
- The annual addendum to the fourth quarter TANF Financial Report (or Territorial Financial Report) does not contain the required information on families excluded from the work participation and time-limit calculations, the State's definition of work activities, and the descriptive information on transitional services in the TANF program as required by section 411(a).

This means that:

(1) For the disaggregated data in section one of the TANF Data Report (Appendix A), we will impose a penalty if the section 411(a)-based data elements are not complete and accurate and if the items identified as necessary to carry out the data collection system requirements are also not complete and accurate;

(2) For the disaggregated information in section two of the TANF Data Report (Appendix B), the information required by section 411(a) must be complete and accurate;

(3) For the aggregated data in section three of the TANF Data Report (Appendix C), the section 411(a)-based data elements, and the data elements necessary to meet the data collection systems requirements and verify and validate the disaggregated data, must be complete and accurate; and

(4) For the TANF Financial Report (or Territorial Financial Report), a State must file complete and accurate information on its definition of work activities, any families excluded from the work participation or time-limit calculations because of the State's definition of families receiving assistance, total program expenditures and expenditures on administrative costs and transitional services as specified in section 411(a).

The Statutory Reference Tables at Appendices I–K identify the specific statutory bases for the data elements and those that are necessary to carry out the data collection system requirements.

Paragraph (b) specifies that we will not apply the penalty to the TANF–MOE Data Report, the annual program and performance report proposed in § 275.9, or the other information on individuals and families required based on section 411(b).

We took this approach because the penalty for failure to submit a timely report at section 409(a)(2) applies to the data collection requirements in section 411(a). We considered applying the penalty to all of the data elements in the disaggregated sections of the TANF Data Report (Appendices A and B) as the overwhelming majority of the data elements in these two instruments are specified in section 411(a). In addition to the importance of the information, we thought that this approach would be simpler and easier to administer.

We concluded, however, that we do not have the authority to impose a penalty for failure to report on additional elements (other than those relating to section 411(a)) in the TANF Data Report or the TANF Financial Report. Nor do we have authority to impose a penalty for failure to file the TANF-MOE Data Report or the annual report on program and performance.

This means we will not impose a penalty under this part for failure to file data elements necessary to carry out other statutory provisions. However, the failure to file data elements based on other statutory provisions will subject the State to any penalty relating to those provisions. For example, the TANF Data Report includes five elements based on section 409(a)(9) (time limits on receipt of assistance). The penalty for failure to file the section 409(a)(9) data elements is tied to the penalty provisions in section 409. If a State does not file the complete and accurate information necessary to administer section 409(a)(9) in the TANF Data Report, we will determine that the State has not met this requirement, and we will impose the penalty specified under section 409(a)(9).

We cannot over-emphasize how seriously we look upon the matter of complete, accurate, and timely reporting. As noted earlier, the data collected will serve many functions—for States, the Congress, the public, and for us. Adequate data will be critical to many policy and administrative implementation activities.

For example, a State's failure to file complete, accurate, and timely TANF Financial Reports may jeopardize the timely payment of TANF grants to the State and will raise questions as to whether a State is subject to a penalty for misuse of funds, intentional misuse of funds, or failure to make sufficient ''qualified State expenditures'' for TANF MOE or Contingency Fund MOE purposes.

We propose in paragraph (c) that, when a State meets one or more of the conditions set forth in paragraph (a), we will notify the State that we intend to impose a penalty and reduce the SFAG for the immediately succeeding fiscal year by four percent.

However, paragraph (d) specifies that, if the State meets the requirements by the end of the next fiscal quarter that immediately follows the quarter for which the report was due, we will not impose the penalty. For example, if a State fails to file a complete and accurate report for the first quarter of the fiscal year by February 14, but does file the report by March 31, we will not penalize the State.

If a State does not meet the reporting requirements, we intend to impose the penalty. Before we do so, paragraph (e) provides that States will have an opportunity to submit ''reasonable cause'' justifications and/or corrective compliance plans in accordance with §§ 272.4–272.6.

If we find that a penalty is appropriate, we propose, in paragraph (f), that we will reduce, by four percent, the State's family assistance grant for the next fiscal year as specified in section 409(a)(2) unless we determine that a reduction is not appropriate pursuant to sections 409(c) (2) and (3).

What information must the State file annually? (§ 275.9)

We propose in this section that States must submit two reports annually. Paragraphs (a) and (b) refer to the State's definitions and other information that must be submitted as an addendum to the fourth quarter TANF Financial Report (or Territorial Financial Report). See Section 3 of Appendix D for details. Paragraph (c) proposes that an annual program and performance report must be submitted to meet the requirements of section 411(b), the report to Congress.

In paragraph (a), we propose to require four items of information on the State's TANF program: the number of families excluded from the two work participation rates and time-limit calculations under the State's definition of families receiving assistance (with the basis for the exclusions); the State's definition of each work activity; a description of the transitional services provided to families no longer receiving assistance due to employment, as specified in sections 411(a)(1)(A)(xi), (a)(2) and (a)(5); and a description of how the State carries out pro rata (or more) reductions in assistance for recipients refusing without good cause to work. This last item would provide information necessary to implement section 409(a)(14).

In paragraph (b), we propose to require the eight items of descriptive and expenditure-related information on the State's separate MOE program, as specified in § 273.7.

States must submit the information in both paragraphs (a) and (b) at the same time as the fourth quarter TANF Financial Report.

We believe the information in paragraphs (a) and (b) is readily available, will be easy to report annually, and will not be burdensome for States. The information related to the State's separate MOE program is important to our ability to track and monitor the MOE expenditures and program effects. (See also our discussion of the importance of MOE program information in § 273.7.)

In order to reflect the most current and accurate information about State TANF programs in the Secretary's annual report to Congress, we propose in paragraph (c) that each State must file an annual program and performance report. The content of this report, as described in paragraph (c), will address the provisions of section 411(b) and the concerns of Congress and others about the implementation of the TANF program.

At a later date, following public comment on this NPRM, we will develop and obtain further public comment on, and OMB approval for, a reporting form that includes both the specific content of the report and instructions for filing.

In order to minimize the reporting burden on States, we will collect some information for our report to Congress from the quarterly Data and Financial Reports, State Plans, annual rankings and reviews, and/or other special studies. We also plan to take advantage of, and work in conjunction with other efforts to acquire information on the TANF program, including research agencies and organizations currently gathering information on program design and implementation.

To the extent that we may be able to build on existing collaborations, we can avoid duplication of effort and produce a better, more complete national picture of the TANF program.

When are annual reports due? (§ 275.10)

Paragraph (a) proposes that the information in the addendum to the fourth quarter TANF Financial Report, specified in § 275.9 (a) and (b), must be filed at the same time as the fourth quarter TANF Financial Report. This means that this information is due one month following the end of the fourth quarter.

Paragraph (b) proposes that States must file the annual program and performance report to meet the provisions of section 411(b) within 90 days after the close of the fiscal year. This means that the annual report describing State activities carried out in FY 1997 will be due December 30, 1997.

This annual report requirement in section 411(b) is not covered by the statutory effective date for reporting in section 116 of PRWORA. The proposed deadline is consistent, however, with the deadline for most annual reports under DHHS grant programs as specified in 45 CFR 92.40(b)(1).

V. Regulatory Impact Analyses

A. Executive Order 12866

Executive Order 12866 requires that regulations be drafted to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that this proposed rule is consistent with these priorities and principles. This proposed rulemaking implements statutory authority based on broad consultation and coordination.

The Executive Order encourages agencies, as appropriate, to provide the public with meaningful participation in the regulatory process. As described elsewhere in the preamble, ACF consulted with State and local officials and their representative organizations as well as a broad range of advocacy groups, researchers and others to obtain their views.

We discuss the input received during the consultation process in the ''supplementary information'' section of the preamble and in discussions of individual regulatory provisions. To a considerable degree, these proposed rules reflect the discussion and concerns of the groups with whom we consulted.

These proposed rules reflect the intent of PRWORA to achieve a balance between granting States the flexibility they need to develop and operate effective and responsive programs and ensuring that the objectives of the program are met. Under the new law, State flexibility is achieved by converting the welfare program into a block grant and limiting Federal rules; ensuring that program goals are accomplished is achieved through a number of penalty and bonus provisions and extensive data collection.

We support State flexibility in numerous ways—such as by exercising regulatory restraint; giving States the ability to define key program terms; and clarifying that States have the ability to continue their welfare reform demonstrations and serve victims of domestic violence, non-custodial parents, and immigrants (with State funds).

We support the achievement of program goals by ensuring that we capture key information on what is happening under the State TANF programs and maintaining the integrity of the work and other penalty provisions. We take care, in provisions such as the proposed MOE data collection and caseload reduction factor approval process, to protect against negative impacts on needy families. (Subsequent rules on the high performance bonus, illegitimacy bonus,

child poverty rates and Tribal TANF programs will reinforce these objectives.)

One of our key goals in drafting the penalty rules was to ensure State performance in all key areas provided under statute—including work participation, time limits, State maintenance-of-effort, proper use of Federal funds and data reporting. The law specified that we should enforce State actions in these areas and specified the penalty for each failure. Through the ''reasonable cause'' and ''corrective compliance'' provisions in the proposed rules we give some consideration to special circumstances within a State to help ensure that neither the State nor needy families within the State will be unfairly penalized for circumstances beyond their control.

In the work and penalty areas, this rulemaking provides information to the States that will help them understand our specific expectations and take the steps necessary to avoid penalties. These rules may ultimately affect the number and size of penalties that are imposed on States, but the basic expectations on States are statutory, and the effect of these rules is non-material.

The financial impacts of these proposed rules should be minimal because of the fixed level of funding provided through the block grant. (We expect Federal outlays for State Family Assistance Grants, exclusive of any bonuses, to amount to nearly $15.6 billion in FY 1998.) A State's Federal grant could be affected by the penalty decisions made under the law and these rules, and State expenditures on needy families could be affected by the proposed rules on the caseload reduction. Otherwise, we do not believe that the rulemaking will affect the overall level of funding or expenditures. However, it could have minor impacts on the nature and distribution of such expenditures.

In the area of data collection, the statutory requirements are very specific and extensive—especially with respect to case-record or disaggregated data. These proposed rules include additional data reporting with respect to program expenditures and MOE cases. They expand upon the expenditure data explicitly mentioned by the statute in order to ensure that: needy families continue to receive assistance and services; monies go for the intended purposes; and the financial integrity of the program is maintained. They also include additional, optional data collection for MOE cases. We included this additional MOE data collection in order to assess the overall impact of the program and ensure that the creation of separate State programs does not undermine the objectives of the Act.

The impacts of these rules on needy individuals and families will depend on the choices the State makes in implementing the new law. We expect our proposed data collection to enable tracking of these effects over time and across States. Overall, our assessment of these proposed rules indicates that they represent the least burdensome approach and that the impacts and consequences are non-material for individuals, States, and other entities.

B. Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. Ch. 6) requires the Federal government to anticipate and reduce the impact of rules and paperwork requirements on small businesses and other small entities. Small entities are defined in the Act to include small businesses, small non-profit organizations, and small governmental entities. This rule will affect only the 50 States, the District of Columbia, and certain territories. Therefore, the Secretary certifies that this rule will not have a significant impact on small entities.

C. Paperwork Reduction Act

This proposed rule contains information collection activities that are subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. Under this Act, no persons are required to respond to a collection of information unless it displays a valid OMB control number. As required by the Paperwork Reduction Act, we have submitted the proposed data collection requirements to OMB for review and approval. We are concurrently using this NPRM as a vehicle for seeking comment from the public on these information collection activities.

The proposed rules contain provisions covering three quarterly reports and one annual report. In addition, we are proposing that States provide documentation for caseload reduction credit and the reasonable cause/corrective action process and that they file certain program definitions and descriptions annually. In order to provide an opportunity for maximum review and public comment on the reporting requirements, we have attached the proposed quarterly reports (including the specific data elements) and the annual addendum as Appendices to part 275. We will revise these instruments following the comment period on the NPRM and will issue them to States through the ACF policy issuance system. We will not re-publish these appendices as a part of the final rule.

The three quarterly reports are the TANF Data Report (Appendices A through C), the TANF MOE Data Report (Appendices E through G), and the TANF Financial Report (Appendix D) (or, as applicable, the Territorial Financial Report). The TANF Data Report and the TANF MOE Data Report consist of three sections each. Two of these three sections consist of disaggregated case-record data elements, and one consists of aggregated data elements.

We need this proposed information collection to meet the requirements of section 411(a) and to implement other sections, including sections 407 (work participation requirements), 409 (penalties), 413 (annual rankings), and 411(b) (Annual report to Congress).

Reporting on the separate State MOE program(s) is optional. However, if a State claims MOE expenditures under a separate State program and wishes to receive a high performance bonus, qualify for work participation caseload reduction credit, or be considered for a reduction in the penalty for failing to meet the work participation requirements, it must file disaggregated and aggregated information on the separate State program(s) that is similar to that reported for the TANF program. (See Appendices E, F, and G for the proposed data elements.)

The TANF Financial Report consists of one form with an annual addendum to be submitted at the same time as the TANF Financial Report for the fourth quarter. (See Appendix D.)

We need this report to meet the requirements of sections 405(c)(2), 411(a)(2), 411(a)(3), and 411(a)(5), and to carry out our other financial management and oversight responsibilities. These include providing information that could be used in determining whether States are subject to penalties under section 409(a)(1), 409(a)(3), 409(a)(7), 409(a)(9), or 409(a)(14), tracking the reasonableness of our definition of ''assistance,'' learning the extent to which recipients of benefits and services are covered by program requirements, and helping to validate the disaggregated data we receive on TANF and MOE cases.

We are also proposing an annual report in order to collect the data required by section 411(b). This report requires the submission of information about the characteristics of each State program; the design and operation of the program; the services, benefits, and assistance provided; the State's

eligibility criteria; and the State's definition of work activities. At its option, each State may also include a description of any unique features, accomplishments, innovations, or additional information appropriate for inclusion in the Department's annual report to the Congress.

We will work with representatives of States and others to identify the specific form that will be used for this report, building on the information currently being collected on the TANF program by research organizations and others. Before we issue a reporting form to gather this information and instructions for filing the report, we will give the public another opportunity to comment on its content and the burden imposed.

Besides the data collection instruments discussed above, there are two other circumstances in the proposed rules that will create a reporting burden. The first circumstance would be in cases where a State wants to qualify for caseload reduction credit. The second would be in cases where a State is subject to a penalty under section 409 and wishes to avoid the penalty or receive a reduced penalty.

If a State elects to request a decrease in its participation rates based on caseload reduction, we are proposing in § 271.41 that it must file certain data. In addition, if a State wishes to dispute a penalty determination or wants to be considered for a waiver of a penalty based on ''reasonable cause'' or corrective compliance, we are proposing in § 272.4 that the State would provide us with information. We are proposing that a State would use a similar process if it is seeking a reduced penalty for failure to meet the work participation rates, as discussed at § 271.51. Therefore, we also address the burden issues related to these processes below.

The respondents for the TANF Financial Report are the 50 States of the United States and the District of Columbia. The respondents for the TANF Data Report, the TANF MOE Data Report, the TANF Annual Report, the Caseload Reduction Credit documentation process, and the Reasonable Cause/Corrective Action documentation process are the 50 States of the United States, the District of Columbia, Guam, Puerto Rico, and the United States Virgin Islands. American Samoa is eligible for the TANF program and could use funds that it receives under section 1108 to operate the TANF program. However, it did not elect to operate an AFDC program, and we assumed that it would elect not to operate a TANF program.

While the statute requires Tribal organizations with TANF programs to submit some of the same data as States, we have not calculated the burden for the Tribal organizations in this NPRM because a separate NPRM will address Tribal TANF programs.

Tribal TANF programs will not be required to submit all of the data required for State TANF programs because some provisions for which data are being collected apply only to States. In addition, because Tribal organizations have not previously operated AFDC programs, the burden imposed on them by reporting will be substantially different than it is for the States. In light of these special considerations, we considered it more appropriate to address the burden on Tribes in that separate NPRM.

In providing these estimates of reporting burden, we would like to point out that some of the reporting burden that used to exist in the AFDC program has disappeared, including the ''FLASH Report'' and several other reports. Nevertheless, most of the data elements required under the TANF Data Report are similar to previous data elements required in the AFDC or JOBS program. Therefore, the existence of these data elements should reduce the systems development and modification that the States will undertake. In calculating the estimates of the reporting burden, we assumed that all States would collect the data by means of a review sample. We believe that a number of States will eventually choose to undertake the one-time burden and cost of developing or modifying their systems to provide the required data directly from their automated systems, thus substantially reducing or eliminating the ongoing annual burden and cost reflected in these estimates.

In a very limited number of cases, we have proposed collecting information quarterly where the statute only requires annual reporting, or we have added elements not directly specified in the statute. We did this because one of our goals was to limit the number of reporting forms and systems modifications that States would be required to make.

Specifically, we believe that adding a data element like gender, that had been developed for other purposes such as Quality Control, would be useful to understanding the impact of the program and would not impose an additional burden. Similarly, while the reporting of the demographic and financial characteristics of families that become ineligible to receive assistance is only required annually, these data can be collected and reported more efficiently and without creating another form by inclusion in the quarterly TANF Data Report.

Overall, the proposed reporting burden represents a substantial decrease from the burden imposed by the reporting requirements of the prior programs that TANF has replaced. Nevertheless, we encourage States and members of the public to comment and provide suggestions on how the burden can be further reduced and whether we have taken the right course regarding frequency of reporting. The annual burden estimates include any time involved pulling records from files, abstracting information, returning records to files, assembling any other material necessary to provide the requested information, and transmitting the information.

Because of the constraints of the Administrative Procedure Act (APA), we were unable to consult with the States directly on the development of the specific data collection instruments. However, prior to the development of the data collection instruments, we conducted extensive consultations on general data collection issues with representative groups such as the American Public Welfare Association (APWA), the National Governors' Association (NGA), and the National Conference of State Legislatures (NCSL). We also researched the burden estimates for similar OMB-approved data collections in our inventory and consulted with knowledgeable Federal officials.

The annual burden estimates for these data collections are:

Instrument or requirement	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
TANF Data Report-§ 275.3(b)	[1] 54	4	526.5	113,724
TANF MOE Data Report-§ 275.3(d)	[2] 54	4	523.5	113,076
TANF Financial Report-§ 275.3(c) & § 275.9(a)-(b)	[3] 51	4	12	2,448
TANF Annual Report-§ 275.9(c)	[1] 54	1	20	1,080
Caseload Reduction Documentation Process-§ 271.41 & § 271.44	[4] 54	1	40	2,160

Instrument or requirement	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Reasonable Cause/Corrective Action Documentation Process-§§ 272.4, 272.6, & 272.7; § 271.51	[4] 54	1	160	8,640

[1] We estimate that the 50 States, the District of Columbia, Guam, Puerto Rico, and the United States Virgin Islands will be respondents.
[2] We estimate that the 50 States, the District of Columbia, Guam, Puerto Rico, and the United States Virgin Islands will be respondents, though not necessarily all 54 of these States and Territories will elect to have MOE programs and respond the first year.
[3] We estimate that the 50 States and the District of Columbia will be respondents.
[4] We estimate that the 50 States, the District of Columbia, Guam, Puerto Rico, and the United States Virgin Islands will be respondents, though not necessarily all 54 States and Territories will elect to respond the first year.

Estimated Total Annual Burden Hours: 241,128.

We encourage States, organizations, individuals, and other parties to submit comments regarding the information collection requirements to ACF (at the address above) and to the Office of Information and Regulatory Affairs, OMB, Room 3208, New Executive Office Building, 725 17th Street, Washington, DC 20503, ATTN: Desk Officer for ACF.

To ensure that public comments have maximum effect in developing the final regulations and the data collection forms, we urge that each comment clearly identify the specific section or sections of the proposed rule or data collection form that the comment addresses and follow the same order as the regulations and forms.

We will consider comments by the public on these proposed collections of information in:

- Evaluating whether the proposed collections are necessary for the proper performance of our functions, including whether the information will have practical utility;
- Evaluating the accuracy of our estimate of the burden of the proposed collections of information, including the validity of the methodology and assumptions used, and the frequency of collection;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technology, e.g., the electronic submission of responses.

OMB is required to make a decision concerning the collections of information contained in these proposed rules between 30 and 60 days after publication of this document in the **Federal Register.** Therefore, a comment is assured of having its full effect if OMB receives it within 30 days of publication. This OMB review schedule does not affect the deadline for the public to comment to ACF on the proposed rules. Written comments to OMB for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, N.W., Washington, D.C. 20502, Attn: Ms. Laura Oliven.

D. Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act) requires that a covered agency prepare a budgetary impact statement before promulgating a rule that includes any Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year.

If a covered agency must prepare a budgetary impact statement, section 205 further requires that it select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with the statutory requirements. In addition, section 203 requires a plan for informing and advising any small government that may be significantly or uniquely impacted by the proposed rule.

We have determined that the proposed rules will not result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of more than $100 million in any one year. Accordingly, we have not prepared a budgetary impact statement, specifically addressed the regulatory alternatives considered, or prepared a plan for informing and advising any significantly or uniquely impacted small government.

List of Subjects in 45 CFR Parts 270 through 275

Administrative practice and procedure, Day care, Employment, Grant programs—Social programs, Loan programs—Social programs, Manpower training programs, Penalties, Public assistance programs, Reporting and recordkeeping requirements, Vocational education.

(Catalogue of Federal Domestic Assistance Programs: 93.558 TANF programs—State Family Assistance Grants, Assistance grants to Territories, Matching grants to Territories, Supplemental Grants for Population Increases and Contingency Fund; 93.559—Loan Fund; 93.595—Welfare Reform Research, Evaluations and National Studies)

Dated: August 14, 1997.

Olivia A. Golden,

Principal Deputy Assistant Secretary for Children and Families.

Approved: September 2, 1997.

Donna E. Shalala,

Secretary, Department of Health and Human Services.

For the reasons set forth in the preamble, we propose to amend 45 CFR chapter II by adding parts 270 through 275 to read as follows:

PART 270—GENERAL TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF) PROVISIONS

Sec.
270.10 What does this part cover?
270.20 What is the purpose of the TANF program?
270.30 What definitions apply under the TANF regulations?
270.40 When are these provisions in effect?

Authority: 42 U.S.C. 601, 601 note, 603, 604, 606, 607, 608, 609, 610, 611, 619, and 1308.

§ 270.10 What does this part cover?

This part includes regulatory provisions that generally apply to the Temporary Assistance for Needy Families (TANF) program.

§ 270.20 What is the purpose of the TANF program?

The TANF program has the following four purposes:

(a) Provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives;

(b) End the dependence of needy parents on government benefits by promoting job preparation, work, and marriage;

(c) Prevent and reduce the incidence of out-of-wedlock pregnancies and establish annual numerical goals for preventing and reducing the incidence of these pregnancies;

(d) Encourage the formation and maintenance of two-parent families.

§ 270.30 What definitions apply under the TANF regulations?

The following definitions apply under parts 270 through 275 of this chapter:

ACF means the Administration for Children and Families.

Act means Social Security Act, unless otherwise specified.

Adjusted State Family Assistance Grant, or adjusted SFAG, means the SFAG amount, minus any reductions for Tribal Family Assistance Grants paid to Tribal grantees on behalf of Indian families residing in the State.

Adult means an individual who is not a ''minor child,'' as defined elsewhere in this section.

AFDC means Aid to Families with Dependent Children.

Aid to Families with Dependent Children means the welfare program in effect under title IV-A of prior law.

Assistance means every form of support provided to families under TANF (including child care, work subsidies, and allowances to meet living expenses), except: Services that have no direct monetary value to an individual family and that do not involve implicit or explicit income support, such as counseling, case management, peer support, and employment services that do not involve subsidies or other forms of income support; and one-time, short-term assistance (i.e., assistance paid within a 30-day period, no more than once in any twelve-month period, to meet needs that do not extend beyond a 90-day period, such as automobile repair to retain employment and avoid welfare receipt and appliance repair to maintain living arrangements). This definition does not apply to the use of the term assistance at part 273, subpart A, of this chapter.

CCDF means the Child Care and Development Fund, or those child care programs and services funded either under section 418(a) of the Act or the Child Care and Development Block Grant Act of 1990, 42 U.S.C. 9801.

Commingled State TANF expenditures means expenditure of State funds that are made within the TANF program and commingled with Federal funds.

Contingency Fund means Federal funds available at section 403(b) of the Act, and *contingency funds* means the Federal monies made available to States under that section. It does not include any State funds expended as a requirement of that section.

Contingency Fund MOE means the MOE expenditures that a State must make in order to: Meet the MOE requirements at sections 403(b)(4) and 409(a)(10) of the Act and subpart B of part 274 of this chapter; and retain contingency funds made available to the State. The only expenditures that qualify for Contingency Fund MOE are State TANF expenditures and, in certain cases, child care expenditures made under the Child Care and Development Fund (CCDF).

EA means Emergency Assistance.

Eligible State means a State that, during the 2-year period immediately preceding the fiscal year, has submitted a TANF plan that we have determined is complete.

Emergency Assistance means the program option available to States under sections 403(a)(5) and 406(e) of prior law to provide short-term assistance to needy families with children.

Family Violence Option (or FVO) means the provision at section 402(a)(7) of the Act under which States may elect to implement comprehensive strategies for identifying and serving victims of domestic violence.

FAMIS means the automated statewide management information system under sections 402(a)(30), 402(e), and 403 of prior law.

Federal expenditures means expenditures by a State of Federal TANF funds.

Federal funds and *Federal TANF funds* have the same meaning as TANF funds, as defined in this section.

Fiscal year means the 12-month period beginning on October 1 of the preceding calendar year and ending on September 30.

FY means fiscal year.

Good cause domestic violence waiver means a waiver of one or more program requirements granted by a State to a victim of domestic violence under the Family Violence Option that is:

(1) Granted appropriately, based on need, as determined by an individualized assessment;

(2) Temporary, for a period not to exceed six months; and

(3) Accompanied by an appropriate services plan designed to provide safety and lead to work.

IEVS means the Income and Eligibility Verification System operated pursuant to the provisions in section 1137 of the Act.

Inconsistent means that complying with a TANF requirement would necessitate that a State change a policy reflected in an approved waiver.

Indian, Indian Tribe and Tribal Organization have the meaning given such terms by section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b), except that the term ''Indian tribe'' means, with respect to the State of Alaska, only the Metlakatla Indian Community of the Annette Islands Reserve and the following Alaska Native regional nonprofit corporations:

(1) Arctic Slope Native Association;

(2) Kawerak, Inc.;

(3) Maniilaq Association;

(4) Association of Village Council Presidents;

(5) Tanana Chiefs Council;

(6) Cook Inlet Tribal Council;

(7) Bristol Bay Native Association;

(8) Aleutian and Pribilof Island Association;

(9) Chugachmuit;

(10) Tlingit Haida Central Council;

(11) Kodiak Area Native Association; and

(12) Copper River Native Association.

Job Opportunities and Basic Skills Training Program means the program under title IV–F of prior law to provide education, training and employment services to welfare recipients.

JOBS means the Job Opportunities and Basic Skills Training Program.

Minor child means an individual who:

(1) Has not attained 18 years of age; or

(2) Has not attained 19 years of age and is a full-time student in a secondary school (or in the equivalent level of vocational or technical training).

MOE means maintenance-of-effort.

Needy State is a term that pertains to the provisions on the Contingency Fund and the penalty for failure to meet participation rates. It means, for a month, a State where:

(1)(i) The average rate of total unemployment (seasonally adjusted) for the most recent 3-month period for which data are published for all States equals or exceeds 6.5 percent; and

(ii) The average rate of total unemployment (seasonally adjusted) for such 3-month period equals or exceeds 110 percent of the average rate for either (or both) of the corresponding 3-month periods in the two preceding calendar years; or

(2) The Secretary of Agriculture has determined that the average number of individuals participating in the Food Stamp program in the State has grown at least ten percent in the most recent three-month period for which data are available.

Prior law means the provisions of title IV–A and IV–F of the Act in effect as of August 21, 1996. They include provisions related to Aid to Families with Dependent Children (or AFDC), Emergency Assistance (or EA), Job Opportunities and Basic Skills Training (or JOBS), and FAMIS.

PRWORA means the Personal Responsibility and Work Opportunity

Reconciliation Act of 1996, or Pub. L. 104–193, 42 U.S.C. 1305.

Qualified Aliens has the meaning prescribed under section 431 of PRWORA, as amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, or Pub. L. 104–208, 8 U.S.C. 1101.

Qualified State Expenditures means the total amount of State funds expended during the fiscal year that count for TANF MOE purposes. It includes expenditures, under any State program, for any of the following with respect to eligible families:

(1) Cash assistance;

(2) Child care assistance;

(3) Educational activities designed to increase self-sufficiency, job training, and work, excluding any expenditure for public education in the State except expenditures involving the provision of services or assistance of an eligible family that is not generally available to persons who are not members of an eligible family;

(4) Any other use of funds allowable under subpart A of part 273 of this chapter; and

(5) Administrative costs in connection with the matters described in paragraphs (1), (2), (3) and (4) of this definition, but only to the extent that such costs do not exceed 15 percent of the total amount of qualified State expenditures for the fiscal year.

Secretary means Secretary of the Department of Health and Human Services or any other Department official duly authorized to act on the Secretary's behalf.

Segregated State TANF expenditures means the expenditure of State funds within the TANF program that are not commingled with Federal funds.

Separate State program means a program operated outside of TANF in which the expenditures of State funds may count for TANF MOE purposes.

SFAG means State Family Assistance Grant, as defined in this section.

SFAG payable means the SFAG amount, reduced, as appropriate, for any Tribal Family Assistance Grants made on behalf of Indian families residing in the State and any penalties imposed on a State under this chapter.

Single audit means an audit or supplementary review conducted under the authority of the Single Audit Act at 31 U.S.C. chapter 75.

State means the 50 States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, and American Samoa, unless otherwise specified.

State Family Assistance Grant means the amount of the basic block grant allocated to each eligible State under the formula at section 403(a)(1) of the Act.

State MOE expenditures means the expenditure of State funds that may count for purposes of the TANF MOE requirements at section 409(a)(7) of the Act and the Contingency Fund MOE requirements at sections 403(b)(4) and 409(a)(10) of the Act.

State TANF expenditures means the expenditure of State funds within the TANF program.

TANF means The Temporary Assistance for Needy Families Program.

TANF funds means all funds provided to the State under section 403 of the Act, including the SFAG, any bonuses, supplemental grants, or contingency funds.

TANF MOE means the expenditure of State funds that must be made in order to meet the MOE requirement at section 409(a)(7) of the Act.

TANF program means a State program of family assistance operated by an ''eligible State'' under its State TANF plan.

Territories means Puerto Rico, the Virgin Islands, Guam, and American Samoa.

Title IV–A refers to the title and part of the Act that now includes TANF, but previously included AFDC and EA. For the purpose of the TANF program regulations, this term does not include child care programs authorized and funded under section 418 of the Act, or their predecessors, unless we specify otherwise.

Tribal Family Assistance Grant means a grant paid to a Tribe that has an approved Tribal family assistance plan under section 412(a)(1) of the Act.

Tribal grantee means a Tribe that receives Federal funds to operate a Tribal TANF program under section 412(a) of the Act.

Tribal TANF program means a TANF program developed by an eligible Tribe, Tribal organization, or consortium and approved by us under section 412 of the Act.

Tribe means Indian Tribe or Tribal organization, as defined elsewhere in this section. The definition may include Tribal consortia (i.e., groups of federally recognized Tribes or Alaska Native entities that have banded together in a formal arrangement to develop and administer a Tribal TANF program).

Victim of domestic violence means an individual who is battered or subject to extreme cruelty under the definition at section 408(a)(7)(B)(iii) of the Act.

Waiver refers to a specific action taken by the Secretary under the authority of section 1115 of the Act to allow a State to operate a program that does not follow specific requirements of prior law. For the purpose of parts 270 through 275 of this chapter and section 415 of the Act, it consists of provisions necessary to achieve the State's policy objective. It includes the approved revised AFDC requirements, articulated in the State's waiver list. It also includes those provisions of prior law that:

(1) Did not need to be waived as part of the waiver package; and

(2) Were integral and necessary to achieve the State's policy objective for the approved waiver.

We (and any other first person plural pronouns) means the Secretary of Health and Human Services or any of the following individuals or organizations acting in an official capacity on the Secretary's behalf: the Assistant Secretary for Children and Families, the Regional Administrators for Children and Families, the Department of Health and Human Services, and the Administration for Children and Families.

Welfare-to-Work means the new program for funding work activities at section 403(a)(5) of the Act.

WTW means Welfare-to-Work.

§ 270.40 When are these provisions in effect?

(a) The TANF statutory requirements go into effect no sooner than a State's implementation of its TANF program. Each State must implement its TANF program no later than July 1, 1997.

(b) In determining whether a State is subject to a penalty under parts 271 through 275 of this chapter, we will not apply the regulatory provisions in parts 270 through 275 of this chapter retroactively. We will judge State behavior and actions that occur prior to [effective date of final rules] only against a reasonable interpretation of the statutory provision in title IV–A of the Act.

PART 271—ENSURING THAT RECIPIENTS WORK

Sec.

Authority: 42 U.S.C. 601, 602, 607, and 609.

§ 271.1 What does this part cover?

This part includes the regulatory provisions relating to the mandatory work requirements of TANF.

§ 271.2 What definitions apply to this part?

The general TANF definitions at § 270.30 of this chapter apply to this part.

Subpart A—Individual Responsibility

§ 271.10 What work requirements must an individual meet?

(a) A parent or caretaker receiving assistance must engage in work activities when the State has determined that the individual is ready to engage in work or when (s)he has received assistance for a total of 24 months, whichever is earlier. The State must define what it means to engage in work for this requirement, which can include participation in work activities in accordance with section 407 of the Act.

(b) If a parent or caretaker has received assistance for two months, (s)he must participate in community service employment, unless the State has exempted the individual from work requirements or (s)he is already engaged in work activities as described at § 271.30. The State will determine the minimum hours per week and the tasks the individual must perform as part of the community service employment. This requirement takes effect no later than August 22, 1997, unless the governor of the State opts out of this provision by notifying HHS.

§ 271.11 Which recipients must have an assessment under TANF?

(a) The State must make an initial assessment of the skills, prior work experience, and employability of each recipient who is at least age 18 or who has not completed high school (or equivalent) and is not attending secondary school.

(b) The State may make any required assessments within 90 days (180 days, at State option) of the date it implements the TANF program for anyone receiving assistance as of that date. For anyone else who must have an assessment, the State may assess an individual within 30 days (90 days, at State option) of the date (s)he becomes eligible for assistance.

§ 271.12 What is an individual responsibility plan?

An individual responsibility plan is a plan developed at State option, in consultation with the individual, on the basis of the assessment made under § 271.11. The plan:

(a) Should set an employment goal for the individual and a plan for moving immediately into private sector employment;

(b) Should describe the obligations of the individual. These could include going to school, maintaining certain grades, keeping school-age children in school, immunizing children, going to parenting or money management classes, or doing other things that will help the individual become and remain employed in the private sector;

(c) Should be designed to move the individual into whatever private sector employment (s)he is capable of handling as quickly as possible, and to increase over time the responsibility and the amount of work the individual handles;

(d) Should describe the services the State will provide the individual; and

(e) May require the individual to undergo appropriate substance abuse treatment.

§ 271.13 May an individual be penalized for not following an individual responsibility plan?

Yes. If an individual fails without good cause to comply with an individual responsibility plan that (s)he has signed, the State may reduce the amount of assistance otherwise payable to the family, by whatever amount it considers appropriate. This penalty is in addition to any other penalties under the State's TANF program.

§ 271.14 What is the penalty if an individual refuses to engage in work?

If an individual refuses to engage in work required under section 407 of the Act, the State must reduce or terminate the amount of assistance payable to the family, subject to any good cause or other exceptions the State may establish. A grant reduction must be at least prorated, based on the portion of the month in which the individual refuses to work, but could be greater.

§ 271.15 Can a family be penalized if a parent refuses to work because (s)he cannot find child care?

(a) If the individual is a single custodial parent caring for a child under age six, the State may not reduce or terminate assistance for the parent's refusal to engage in required work if (s)he demonstrates an inability to obtain needed child care for one or more of the following reasons:

(1) Appropriate child care within a reasonable distance from the home or work site is unavailable;

(2) Informal child care by a relative or under other arrangements is unavailable or unsuitable; or

(3) Appropriate and affordable formal child care arrangements are unavailable.

(b)(1) The State will determine when the individual has demonstrated that (s)he cannot find child care, in accordance with criteria established by the State.

(2) These criteria must:

(i) Address the procedures that the State uses to determine if the parent has a demonstrated inability to obtain needed child care;

(ii) Include definitions of the terms ''appropriate child care,'' ''reasonable distance,'' ''unsuitability of informal care,'' and ''affordable child care arrangements''; and

(iii) Be submitted to us.

§ 271.16 Does the imposition of a penalty affect an individual's work requirement?

A penalty imposed by a State against the family of an individual by reason of the failure of the individual to comply with a requirement under TANF shall not be construed to be a reduction in any wage paid to the individual, and shall not result in a reduction in the number of hours of work required.

Subpart B—State Accountability

§ 271.20 How will we hold a State accountable for achieving the work objectives of TANF?

(a) Each State must meet two separate work participation rates, one based on how well it succeeds in helping adults in two-parent families find work activities described at § 271.30 (the two-parent rate), the other based on how well it succeeds in finding those activities for adults in all families it serves (the overall rate).

(b) Each State must submit data to allow us to measure its success in requiring adults to participate in work activities, as specified at § 275.3 of this chapter.

(c) If the data show that a State met both participation rates in a fiscal year, then the percentage of historic State expenditures that it must expend under TANF, pursuant to § 273.1 of this chapter, decreases from 80 to 75 percent for that fiscal year. This is also known as the State's ''maintenance of effort'' requirement.

(d) If the data show that a State did not meet either minimum work participation rate for a fiscal year, a State could be subject to a financial penalty.

(e) Before we impose a penalty, a State will have the opportunity to claim reasonable cause or enter into a corrective compliance plan, pursuant to §§ 272.5 and 272.6 of this chapter.

§ 271.21 What overall work rate must a State meet?

Each State must achieve the following minimum overall participation rate:

If the fiscal year is:	Then the minimum participation rate is:
1997	25
1998	30
1999	35
2000	40
2001	45
2002 and thereafter	50

§ 271.22 How will we determine a State's overall work rate?

(a) The overall participation rate for a fiscal year is the average of the State's overall participation rates for each month in the fiscal year.

(b)(1) We determine a State's overall participation rate for a month as follows:

(i) The number of families receiving TANF assistance that include an adult or a minor head-of-household who is engaged in work for the month (the numerator); divided by

(ii) The number of families receiving TANF assistance during the month that include an adult or a minor head-of-household minus the number of families that are subject to a penalty for refusing to work in that month (the denominator). However, if a family has been sanctioned for more than three of the last 12 months, we will not deduct it from the denominator.

(2) States may define families receiving TANF assistance . . . that include an adult or a minor child head-of household, but may not exclude families from the definition solely for the purpose of avoiding penalties under § 271.50.

(i) States shall report to us annually on the number of families excluded because of the State's definition and the circumstances underlying each exclusion.

(ii) Where we find that a State has excluded families for the purpose of avoiding a penalty for work participation, we shall include those families in the calculation in paragraph (b)(1) of this section in determining whether a State is subject to the penalty described in § 271.50.

(c) A State has the option of not requiring a single custodial parent caring for a child under age one to engage in work. If the State adopts this option, it may disregard such a family in the participation rate calculation for a maximum of 12 months.

(d) If a family receives assistance for only part of a month, the State may count it as a month of participation if an adult in the family is engaged in work for the minimum average number of hours in each full week that the family receives assistance in that month.

§ 271.23 What two-parent work rate must a State meet?

A State receiving a TANF grant for a fiscal year must achieve the following minimum two-parent participation rate:

If the fiscal year is:	Then the minimum participation rate is:
1997	75
1998	75
1999 and thereafter	90

§ 271.24 How will we determine a State's two-parent work rate?

(a) The two-parent participation rate for a fiscal year is the average of the State's two-parent participation rates for each month in the fiscal year.

(b)(1) We determine a State's two-parent participation rate for a month as follows:

(i) The number of two-parent families receiving TANF assistance that include an adult (or minor child head-of-household) and other parent who meet the requirements set forth in § 271.32 for the month (the numerator); divided by

(ii) The number of two-parent families receiving TANF assistance during the month minus the number of two-parent families that are subject to a penalty for refusing to work in that month (the denominator). However, if a family has been sanctioned for more than three of the last 12 months, we will not deduct it from the denominator.

(2) States may define families receiving TANF assistance . . . that include an adult or a minor child head-of household, but may not exclude families from the definition solely for the purpose of avoiding penalties under § 271.50.

(i) States shall report to us annually on the number of families excluded because of the State's definition and the circumstances underlying each exclusion.

(ii) Where we find that a State has excluded families for the purpose of avoiding a penalty for work participation, we shall include those families in the calculation in paragraph (b)(1) of this section in determining whether a State is subject to the penalty described in § 271.50.

(c) If a family receives assistance for only part of a month, the State may count it as a month of participation if an adult in the family (both adults, if they are both required to work) is engaged in work for the minimum average number of hours in each full week that the family receives assistance in that month.

(d) If a family includes a disabled parent, the family is not considered a two-parent family for the participation rate. Such a family is not included in either the numerator or denominator of the two-parent rate.

§ 271.25 Does a State include Tribal families in calculating these rates?

A State has the option of including families that are receiving assistance under an approved tribal family assistance plan or under a tribal work program in calculating the State's participation rates under §§ 271.22 and 271.24.

Subpart C—Work Activities and How to Count Them

§ 271.30 What are ''work activities''?

Work activities include:

(a) Unsubsidized employment;

(b) Subsidized private sector employment;

(c) Subsidized public sector employment;

(d) Work experience;

(e) On-the-job training (OJT);

(f) Job search and job readiness assistance;

(g) Community service programs;

(h) Vocational educational training;

(i) Job skills training directly related to employment;

(j) Education directly related to employment, in the case of a recipient who has not received a high school diploma or a certificate of high school equivalency;

(k) Satisfactory attendance at secondary school or in a course of study leading to a certificate of general equivalence, if a recipient has not completed secondary school or received such a certificate; and

(l) Providing child care services to an individual who is participating in a community service program.

§ 271.31 How many hours must an individual participate to count in the numerator of the overall rate?

(a) An individual counts as engaged in work for a month for the overall rate if (s)he participates in work activities during the month for at least the minimum average number of hours per week listed in the following table:

If the fiscal year is:	Then the minimum average hours per week is:
1997	20
1998	20
1999	25
2000 or thereafter	30

(b)(1) In addition, for the individual to count as engaged in work, at least 20 per week of the above hours must come from participation in certain of the activities listed in § 271.30. The following nine activities count for the first 20 hours of participation: Unsubsidized employment; subsidized private sector employment; subsidized public sector employment; work experience; on-the-job training; job search and job readiness assistance; community service programs; vocational educational training; and providing child care services to an individual who is participating in a community service program.

(2) Above 20 hours per week, the following three activities may also count for participation: Job skills training directly related to employment; education directly related to employment; and satisfactory attendance at secondary school or in a course of study leading to a certificate of general equivalence.

(c) The following chart below lists when each activity counts, for both the overall and the two-parent rates:

Activity	When does the activity count?			
	Overall rate		2-parent rate	
	20 hours	hours above 20	30/50 hours (without/with Fed child care)	Hours above 30/50
(a) unsubsidized employment	✔	✔	✔	✔
(b) subsidized private sector employment	✔	✔	✔	✔
(c) subsidized public sector employment	✔	✔	✔	✔
(d) work experience	✔	✔	✔	✔
(e) OJT	✔	✔	✔	✔
(f) job search & job readiness	✔	✔	✔	✔
(g) community service programs	✔	✔	✔	✔
(h) vocational educational training	✔	✔	✔	✔
(i) job skills training	No	✔	No	✔
(j) education directly related to employment	No [1]	✔	No [1]	✔
(k) high school or GED	No [1]	✔	No [1]	✔
(l) providing child care services to a community service participant	✔	✔	✔	✔

[1] Teen parents may count due to participation in these activities. Refer to § 271.33.

§ 271.32 How many hours must an individual participate to count in the numerator of the two-parent rate?

(a) If an individual and the other parent in the family are participating in work activities for an average of at least 35 hours per week during the month, then (s)he counts as engaged in work for a two-parent family for the month, subject to paragraph (c) of this section.

(b)(1) In addition, at least 30 of the 35 hours per week must come from participation in certain of the activities listed in § 271.30 for the individual to count as engaged in work. The following nine activities count for the first 30 hours of participation: Unsubsidized employment; subsidized private sector employment; subsidized public sector employment; work experience; on-the-job training; job search and job readiness assistance; community service programs; vocational educational training; and providing child care services to an individual who is

participating in a community service program.

(2) Above 30 hours per week, the following three activities may also count for participation: Job skills training directly related to employment; education directly related to employment; and satisfactory attendance at secondary school or in a course of study leading to a certificate of general equivalence.

(c)(1) If the family receives federally-funded child care assistance and an adult in the family is not disabled or caring for a severely disabled child, then the individual and the other parent must be participating in work activities for an average of at least 55 hours per week for the individual to count as engaged in work for a two-parent family for the month.

(2) At least 50 of the 55 hours per week must come from participation in the activities listed in paragraph (b)(1) of this section.

(3) Above 50 hours per week, the three activities listed in paragraph (b)(2) of this section may also count for participation.

(d) The chart in § 271.31 lists when each activity counts in the two-parent rate.

§ 271.33 What are the special requirements concerning educational activities in determining monthly participation rates?

(a) Vocational educational training may only count for a total of 12 months for any individual.

(b) A married or single head-of-household under 20 years old counts as engaged in work in a month if (s)he:

(1) Maintains satisfactory attendance at a secondary school or the equivalent during the month; or

(2) Participates in education directly related to employment for an average of at least 20 hours per week during the month.

(c) In counting individuals for each participation rate, not more than 30 percent of individuals engaged in work may be included because they are participating:

(1) In vocational educational training; or

(2) In fiscal year 2000 or thereafter, as a teen parent in educational activities described in paragraph (b) of this section.

§ 271.34 Are there any limitations in counting job search and job readiness assistance toward the participation rates?

Yes. There are four limitations concerning job search and job readiness.

(a) Except as provided in paragraph (b) of this section, an individual's participation in job search or job readiness assistance counts for only six weeks in any fiscal year.

(b) If the State's total unemployment rate for a fiscal year is at least 50 percent greater than the United States' total unemployment rate for that fiscal year or if the State meets the definition of a needy State, specified at § 270.30 of this chapter, then an individual's participation in job search or job readiness assistance counts for up to 12 weeks in that fiscal year.

(c) An individual's participation in job search and job readiness assistance counts for no more than four consecutive weeks in a fiscal year.

(d) Not more than once for any individual in a fiscal year, a State may count three or four days of job search and job readiness assistance during a week as a full week of participation.

§ 271.35 Are there any special work provisions for single custodial parents?

Yes. A single custodial parent or caretaker relative with a child under age six will count as engaged in work if (s)he participates for at least an average of 20 hours per week.

§ 271.36 Do welfare reform waivers affect what activities count as engaged in work?

A welfare reform waiver could affect what activities count as engaged in work, if it meets the requirements at § 271.60.

Subpart D—Caseload Reduction Factor for Minimum Participation Rates

§ 271.40 Is there a way for a State to reduce the work participation rates?

(a) If the average monthly number of cases receiving assistance, including assistance under a separate State program, in a State in the preceding fiscal year was lower than the average monthly number of cases that received assistance in FY 1995, the minimum participation rate the State must meet for the fiscal year will decrease by the number of percentage points the caseload fell in comparison to the FY 1995 caseload. The number of percentage points by which the caseload falls is referred to as the caseload reduction factor.

(b) The calculation in paragraph (a) of this section must disregard any caseload reductions due either to requirements of Federal law or to changes that a State has made in its eligibility criteria in comparison to its criteria in effect in FY 1995.

(c) To establish the caseload base for fiscal year 1995, we will use the number of AFDC cases reported on ACF–3697, Statistical Report on Recipients Under Public Assistance. For subsequent years, we will use AFDC data from this same report, supplemented by caseload information from the TANF Data Report and the TANF MOE Data Report for appropriate States beginning with the fourth quarter of fiscal year 1997. To qualify for a caseload reduction, a State must have reported monthly caseload information, including cases in separate State programs, for the preceding year for cases receiving assistance as defined at § 271.43.

§ 271.41 How will we determine the caseload reduction factor?

(a) We will determine the appropriate caseload reduction that applies to each State based on reliable, validated information and estimates reported to us by the State. We will determine whether the information and estimates provided are acceptable, based on the criteria listed in paragraph (d) of this section. We will also conduct periodic, on-site reviews and inspect administrative records on applications and terminations to validate the accuracy of the State estimates.

(b) In order to receive a reduction in the overall participation rate, a State must submit the Caseload Reduction Report to us containing the following information:

(1) A complete listing of and implementation dates for all eligibility changes, as defined at § 271.42, made by the State since the beginning of FY 1995, all changes in Federal requirements and implementation dates for each change since FY 1995, and a listing of the reasons (such as found employment) for case closures;

(2) A numerical estimate of the impact on the caseload of each eligibility change or case closure reason;

(3) A description of the methodology and the supporting data that it used to calculate its caseload reduction estimates; and

(4) A certification from the Governor that it has taken into account all reductions resulting from changes in Federal and State eligibility.

(c) A State requesting a caseload reduction shall provide separate estimates and information for the overall and two-parent family rates.

(1) The State must base its estimate for the overall case rate on decreases in its overall caseload compared to the AFDC caseload in FY 1995.

(2) The State must base its estimate for two-parent cases on decreases in its two-parent caseload compared to the AFDC Unemployed Parent caseload in FY 1995.

(d)(1) For each State, we will assess the adequacy of information and estimates using the following criteria: Methodology, estimates and impact

compared to other States; quality of data; and completeness and adequacy of the documentation.

(2) If we request additional information, the State must provide the information within two weeks of the date of our request.

(3) The State must provide sufficient data to document the information submitted under paragraph (b) of this section.

(e) We will not consider a caseload reduction factor for approval unless the State reports case-record data on individuals and families served by any separate State program, as required under § 275.3(d) of this chapter.

(f) A State may only apply the caseload reduction factor that we have determined to its participation rate. If a State disagrees with our caseload reduction factor, then the determination may be considered an adverse action; therefore, a State has the right to appeal such a decision, as specified at § 272.7 of this chapter.

§ 271.42 Which reductions count in determining the caseload reduction factor?

(a)(1) Each State's estimate must factor out any caseload decreases due to Federal requirements or State changes in eligibility rules since FY 1995 that directly affect a family's eligibility for assistance (e.g., more stringent income and resource limitations, time limits).

(2) A State need not factor out calculable effects of enforcement mechanisms or procedural requirements that are used to enforce existing eligibility criteria (e.g., fingerprinting or other verification techniques) to the extent that such mechanisms or requirements identify or deter families ineligible under existing rules.

(b) States must include cases receiving assistance in separate State programs as part of its caseload. However, we will consider excluding cases in the separate State program under the following circumstances, if adequately documented:

(1) The cases overlap with or duplicate cases in the TANF caseload;

(2) They are cases made ineligible for Federal benefits by Pub. L. 104–193 that are receiving only State-funded cash assistance, nutrition assistance, or other benefits; or

(3) They are cases that are receiving only State earned income tax credits, child care, transportation subsidies or benefits for working families that are not directed at their basic needs.

§ 271.43 What is the definition of a ''case receiving assistance'' in calculating the caseload reduction factor?

(a) The caseload reduction factor is based on decreases in caseload (other than those excluded pursuant to § 271.42) in both a State's TANF program and in any separate State programs that are used to meet the maintenance-of-effort requirement.

(b)(1) For fiscal year 1995, we will use AFDC caseload data.

(2) For all other fiscal years, we will determine the caseload based on all cases in a State receiving assistance (according to the definition of assistance at § 270.30).

§ 271.44 When must a State report the required data on the caseload reduction factor?

(a) A State must report the necessary documentation on the caseload reduction factor for the preceding fiscal year by November 15.

(b) We will notify the State of whether we approve or reject the proposed reduction factor by the following February 15.

Subpart E—State Work Penalties

§ 271.50 What happens if a State fails to meet the participation rates?

(a) If we determine that a State did not achieve one of the required minimum work participation rates, we must reduce the SFAG payable to the State.

(b)(1) If there was no penalty for the preceding fiscal year, the penalty for the current fiscal year is five percent of the adjusted SFAG.

(2) For each consecutive year that the State is subject to a penalty under this part, we will increase the amount of the penalty by two percentage points over the previous year's penalty. However, the penalty can never exceed 21 percent of the State's adjusted SFAG.

(c) We impose a penalty by reducing the SFAG payable for the fiscal year that immediately follows our final determination that a State is subject to a penalty and our final determination of the penalty amount.

(d) In accordance with the procedures specified at § 272.4 of this chapter, a State may dispute our determination that it is subject to a penalty.

§ 271.51 Under what circumstances will we reduce the amount of the penalty below the maximum?

(a) In order to qualify for a penalty reduction under paragraphs (b)(3) and (c) of this section, the State must demonstrate that it has not diverted cases to a separate State program for the purpose of avoiding the work participation requirements.

(b) We will reduce the amount of the penalty based on the degree of the State's noncompliance.

(1) If the State fails only the two-parent participation rate specified at § 271.23, its maximum penalty will be a percentage of the penalty specified at § 271.50. This percentage will equal the percentage of the State's two-parent cases.

(2) If the State fails the overall participation rate specified at § 271.21, or both rates, its maximum penalty will be the penalty specified at § 271.50.

(3)(i) In order to receive a reduction of the penalty amounts determined under paragraphs (b)(1) or (b)(2) of this section, the State must achieve participation rates equal to a threshold level defined as 90 percent of the applicable minimum participation rate, at § 271.23 or § 271.21. If a State met this threshold, we would base its reduction on the severity of the failure.

(ii) For this purpose, we will calculate the severity of the State's failure as the ratio of:

(A) The difference between the participation rate achieved by the State and the 90 percent ''threshold'' level; and

(B) The difference between the minimum applicable participation rate and the threshold level.

(c)(1) We may reduce the penalty if the State failed to achieve a participation rate because:

(i) It meets the definition of a needy State, specified at § 270.30 of this chapter, or

(ii) Noncompliance is due to extraordinary circumstances such as a natural disaster or regional recession.

(2) In determining noncompliance under paragraph (c)(1)(ii) of this section, we will consider objective evidence of extraordinary circumstances if the State chooses to submit it.

§ 271.52 Is there a way to waive the State's penalty for failing to achieve either of the participation rates?

(a) We will not impose a penalty under this part if we determine that the State has reasonable cause for its failure.

(b) In addition to the general reasonable cause criteria specified at § 272.5 of this chapter, a State may also submit a request for a reasonable cause exemption from the requirement to meet the minimum participation rate in two specific case situations, if it demonstrates that it has not diverted cases to a separate State program for the purpose of avoiding the work participation rates.

(1) We will determine that a State has reasonable cause if it demonstrates that failure to meet the work participation rates is attributable to its provision of good cause domestic violence waivers as follows:

(i) To demonstrate reasonable cause, a State must provide evidence that it

achieved the applicable work rates, except with respect to any individuals receiving good cause waivers of work requirements (i.e., when cases with good cause waivers are removed from the calculations in §§ 271.22(b) and 271.24(b)); and

(ii) A State must grant good cause domestic violence waivers appropriately, in accordance with the criteria specified at § 270.30 of this chapter. If a State fails to meet the criteria for ''good cause domestic violence waivers'' specified at § 270.30 of this chapter, the Secretary will not grant reasonable cause under this paragraph (b).

(2) We will determine that a State has reasonable cause if it demonstrates that its failure to meet the work participation rates is attributable to its provision of assistance to refugees in federally-approved alternative projects under section 412(e)(7) of the Immigration and Nationality Act (8 U.S.C. 1522(e)(7)).

(c) In accordance with the procedures specified at § 272.4 of this chapter, a State may dispute our determination that it is subject to a penalty.

§ 271.53 Can a State correct the problem before incurring a penalty?

(a) Yes. A State may enter into a corrective compliance plan to remedy a problem that caused its failure to meet a participation rate, as specified at § 272.6 of this chapter.

(b) To qualify for a penalty reduction under § 272.6(i)(1) of this chapter, based on significant progress in discontinuing a violation, a State must reduce the difference between the participation rate it achieved in the year for which it is subject to a penalty and the rate applicable during the penalty year by 50 percent.

§ 271.54 Is a State subject to any other penalty relating to its work program?

(a) If we determine that, during a fiscal year, a State has violated section 407(e) of the Act, relating to imposing penalties against individuals, we must reduce the SFAG payable to the State.

(b) The penalty amount for a fiscal year will equal between one and five percent of the adjusted SFAG.

(c) We impose a penalty by reducing the SFAG payable for the fiscal year that immediately follows our final determination that a State is subject to a penalty and our final determination of the penalty amount.

§ 271.55 Under what circumstances will we reduce the amount of the penalty for not properly imposing penalties on individuals?

(a) We will reduce the amount of the penalty based on the degree of the State's noncompliance.

(b) In determining the size of any reduction, we will consider objective evidence of:

(1) Whether the State has established a control mechanism to ensure that the grants of individuals are reduced for refusing to engage in required work; and

(2) The percentage of cases for which the grants have not been appropriately reduced.

(c) Neither the reasonable cause provisions at § 272.5 of this chapter nor the corrective compliance plan provisions at § 272.6 of this chapter applies to this penalty.

Subpart F—Waivers

§ 271.60 How do existing welfare waivers affect the participation rate?

(a) If a State is implementing policies in accordance with an approved waiver that meets the provisions of section 415(a)(1)(A) of the Act and the definition of a waiver at § 270.30 of this chapter, the provisions of section 407 of the Act do not apply, to the extent that they are inconsistent with the waiver.

(b)(1) In the case of waivers addressing activities in which an individual may participate in order to be ''engaged in work'' and count toward the minimum participation rates (as specified at § 271.30):

(i) We will include provisions of prior law as part of such waivers; and

(ii) We will recognize such waivers as inconsistent.

(2) In the case of waivers addressing minimum average hours of work per week necessary to be ''engaged in work'' for a month (as specified at §§ 271.31 and 271.32):

(i) We will recognize the waiver as inconsistent if it specifies an individual's mandated hours of participation in accordance with his/her particular circumstances, either as specified by criteria described in the waiver or under an individualized plan or similar agreement for achieving self-sufficiency; and

(ii) We will not recognize as inconsistent any waiver designed to increase the mandatory work hours for a class of recipients under the former JOBS program.

(c) Except as applicable to research cases in paragraph (d) of this section, we will not recognize any prior law exemptions as part of the waiver with respect to the denominator of the participation rates, found at §§ 271.21 and 271.23.

(d) If a State is continuing research group policies in order to complete an impact evaluation of a waiver demonstration, the demonstration's control group may be subject to prior law and its experimental treatment group may be also subject to prior law, except as modified by the waiver.

(e) The additional requirements at § 272.8 of this chapter apply to the use of continuing waiver alternative work requirements in the calculation of the work participation penalty.

Subpart G—Non-displacement

§ 271.70 What safeguards are there to ensure that participants in work activities do not displace other workers?

(a) An adult taking part in a work activity outlined in § 271.30 may not fill a vacant employment position if:

(1) Another individual is on layoff from the same or any substantially equivalent job; or

(2) The employer has terminated the employment of any regular employee or caused an involuntary reduction in its work force in order to fill the vacancy with an adult taking part in a work activity.

(b) A State must establish and maintain a grievance procedure to resolve complaints of alleged violations of the displacement rule in this section.

(c) This section does not preempt or supersede State or local laws providing greater protection for employees from displacement.

PART 272—ACCOUNTABILITY PROVISIONS—GENERAL

Sec.

Authority: 31 U.S.C. 7501 *et seq.*; 42 U.S.C. 606, 609, and 610.

§ 272.0 What definitions apply to this part?

The general TANF definitions at § 270.30 of this chapter apply to this part.

§ 272.1 What penalties will apply to States?

(a) We will assess fiscal penalties against States under circumstances defined in parts 271 through 275 of this chapter. The penalties are:

(1) A penalty of the amount by which a State misused its TANF funds;

(2) A penalty of five percent of the adjusted SFAG for intentional misuse of such funds;

(3) A penalty of four percent of the adjusted SFAG for failure to submit an accurate, complete and timely required report;

(4) A penalty of up to 21 percent of the adjusted SFAG for failure to satisfy the minimum participation rates;

(5) A penalty of no more than two percent of the adjusted SFAG for failure to participate in IEVS;

(6) A penalty of no more than five percent of the adjusted SFAG for failure to enforce penalties on recipients who are not cooperating with the State Child Support Enforcement (IV–D) Agency;

(7) A penalty equal to the outstanding loan amount, plus interest, for failure to repay a Federal loan;

(8) A penalty equal to the amount by which a State fails to meet its TANF MOE requirement;

(9) A penalty of five percent of the adjusted SFAG for failure to comply with the five-year limit on Federal assistance;

(10) A penalty equal to the amount of contingency funds unremitted by a State for a fiscal year;

(11) A penalty of no more than five percent of the adjusted SFAG for the failure to maintain assistance to an adult single custodial parent who cannot obtain child care for a child under age six;

(12) A penalty of no more than two percent of the adjusted SFAG plus the amount a State has failed to expend of its own funds to replace the reduction to its SFAG due to the assessment of penalties in this section in the year of the reduction;

(13) A penalty equal to the amount of the State's Welfare-to-Work formula grant for failure to meet its TANF MOE requirement during a year in which the formula grant is received; and

(14) A penalty equal to not less than one percent and not more than five percent of the adjusted SFAG for failure to reduce assistance for recipients refusing without good cause to work.

(b) In the event of multiple penalties for a fiscal year, we will add all applicable penalty percentages together. We will then assess the penalty amount against the adjusted SFAG that would have been payable to the State if no penalties were assessed. As a final step, we will subtract other (fixed) penalty amounts from the adjusted SFAG.

(c)(1) We will take the penalties specified in paragraphs (a)(1), (a)(2) and (a)(6) of this section by reducing the SFAG payable for the quarter that immediately follows our final decision.

(2) We will take the penalties specified in paragraphs (a)(3), (a)(4), (a)(5), (a)(7), (a)(8), (a)(9), (a)(10), (a)(11), (a)(12), (a)(13), and (a)(14) of this section by reducing the SFAG payable for the fiscal year that immediately follows our final decision.

(d) When imposing the penalties in paragraph (a) of this section, the total reduction in an affected State's grant must not exceed 25 percent. If this 25 percent limit prevents the recovery of the full penalty amount imposed on a State during a fiscal year, we will apply the remaining amount of the penalty to the SFAG payable for the immediately succeeding fiscal year.

(e)(1) In the same fiscal year, a State must expend additional State funds to replace any reduction in the SFAG resulting from penalties.

(2) The State must document compliance with this provision on its TANF Financial Report (or Territorial Financial Report).

§ 272.2 When do the TANF penalty provisions apply?

(a) A State will be subject to the penalties specified in §§ 272.1(a)(1), (2), (7), (8), (9), (10), (11), (12), (13), and (14) for conduct occurring on and after the first day the State operates the TANF program.

(b) A State will be subject to the penalties specified in §§ 272.1(a)(3), (4), (5), and (6) for conduct occurring on and after July 1, 1997, or the date that is six months after the first day the State operates the TANF program, whichever is later.

(c) For the period of time prior to [effective date of final rules], we will assess State conduct as specified in § 270.40(b) of this chapter.

§ 272.3 How will we determine if a State is subject to a penalty?

(a) We will use the single audit, as implemented through OMB Circular A–133, to determine if a State is subject to a penalty for misusing Federal TANF funds (§ 273.10 of this chapter), intentionally misusing Federal TANF funds (§ 273.12 of this chapter), failing to participate in IEVS (§ 274.10 of this chapter), failing to comply with paternity establishment and child support requirements (§ 274.31 of this chapter), failing to maintain assistance to an adult single custodial parent who cannot obtain child care for child under six (§ 274.20 of this chapter), and failing to reduce assistance to a recipient who refuses without good cause to work (§ 271.14 of this chapter).

(b) We will use data reports required under part 275 of this chapter to determine if a State failed to meet participation rates (§ 271.21 of this chapter) or failed to comply with the five-year limit on Federal assistance (§ 274.1 of this chapter).

(1) Data in these reports are subject to our verification in accordance with § 275.7 of this chapter.

(2) States may not revise the sampling frames or program designations for cases in the quarterly TANF and TANF MOE Data Reports retroactively (i.e., after submission).

(c) We will use the TANF Financial Report (or, as applicable, the Territorial Financial Report) to determine if a State should be penalized for failure to meet the TANF MOE requirement (§ 273.7 of this chapter), the Contingency Fund MOE requirement (§ 274.76 of this chapter), and to replace SFAG reductions with State-only funds (§ 274.50 of this chapter). Data in these reports are subject to our verification in accordance with § 275.6 of this chapter.

(d) We will determine that a State is subject to the specific penalties for failure to perform, if we find information in the reports under paragraphs (b) and (c) of this section to be insufficient or if we determine that the State has not adequately documented actions verifying that it has met the participation rates.

(e) To determine if a State has met its TANF MOE requirement, we will use the additional information listed at § 273.7 of this chapter.

(f) States should maintain records in accordance with § 92.42 of this title.

§ 272.4 What happens if we determine that a State is subject to a penalty?

(a) If we determine that a State is subject to a penalty, we will notify the State in writing, specifying which penalty we will impose and the reasons for the penalty.

(b) Within 60 days of when it receives our notification, the State may submit to ACF, a written response that:

(1) Demonstrates that our determination is incorrect because our data or the method we used in determining the penalty was in error or was insufficient, or that the State acted, prior to [effective date of final regulations], on a reasonable interpretation of the statute;

(2) Demonstrates that the State had reasonable cause for failing to meet the requirement(s); and/or

(3) Provides a corrective compliance plan, pursuant to § 272.6.

(c) If we find that we determined the penalty erroneously, or that the State has adequately demonstrated that it had reasonable cause for failing to meet one or more requirements, we will not impose the penalty.

(d) Reasonable cause and a corrective compliance plan are not available for failing to repay a Federal loan; failing to meet the TANF MOE requirement; failing to maintain 100 percent TANF MOE after receiving Contingency Funds; failing to expend additional State funds to replace adjusted SFAG reductions due to the imposition of one or more penalties listed in § 272.1; or failing to maintain 80, or 75, percent, as appropriate, TANF MOE during a year in which a Welfare-to-Work grant is received.

(e) We will notify the State in writing of our findings regarding its response.

(f) If we request additional information from a State, it must provide the information within two weeks of the date of our request.

§ 272.5 Under what general circumstances will we determine that a State has reasonable cause?

(a) We will not impose a penalty against a State if we determine that the State had reasonable cause for its failure. The general factors a State may use to claim reasonable cause are limited to the following:

(1) Natural disasters and other calamities (e.g., hurricanes, earthquakes, fire) whose disruptive impact was so significant as to cause the State's failure;

(2) Formally issued Federal guidance that provided incorrect information resulting in the State's failure; or

(3) Isolated, non-recurring problems of minimal impact that are not indicative of a systemic problem.

(b) A State may also use the additional factors for claiming reasonable cause for failure to satisfy the five-year limit at § 274.3 of this chapter and to meet the minimum participation rates at § 271.52 of this chapter.

(c) We will not forgive a State penalty under §§ 272.1(a)(4), (a)(9), (a)(11), or (a)(14) based on reasonable cause if we detect a significant pattern of diversion of families to a separate State program that achieves the effect of avoiding the work participation rates at §§ 271.22 or 271.24.

(d) We will not forgive a State penalty under §§ 272.1(a)(4), (a)(6), (a)(9), or (a)(14) based on reasonable cause if we detect a significant pattern of diversion of families to a separate State program that achieves the effect of diverting the Federal share of child support collections.

§ 272.6 What if a State does not demonstrate reasonable cause?

(a) A State may accept the penalty or enter into a corrective compliance plan that will correct or discontinue the violation within six months in order to avoid the penalty if:

(1) A State does not claim reasonable cause; or

(2) We find that the State does not have reasonable cause.

(b) A State that does not claim reasonable cause will have 60 days from receipt of our notice described in § 272.4(a) to submit its corrective compliance plan.

(c) A State that unsuccessfully claimed reasonable cause will have 60 days from the date it received our second notice, described in § 272.4(f), to submit its corrective compliance plan.

(d) The corrective compliance plan must include:

(1) A complete analysis of why the State did not meet the requirements;

(2) A detailed description of how the State will correct or discontinue, as appropriate, the violation in a timely manner;

(3) The milestones, including interim process and outcome goals, the State will achieve to assure it comes into compliance within the specified time period; and

(4) A certification by the Governor that the State is committed to correcting or discontinuing the violation, in accordance with the plan.

(e) During the 60-day period following our receipt of the State's corrective compliance plan, we may request additional information and consult with the State on modifications to the plan.

(f) If an acceptable corrective compliance plan is not submitted on time, we will assess the penalty immediately.

(g) A corrective compliance plan is deemed to be accepted if we take no action during the 60-day period following our receipt of the plan.

(h) We will not impose a penalty against a State with respect to any violation covered by a corrective compliance plan that we accept if the State completely corrects or discontinues, as appropriate, the violation within the period covered by the plan. This period must be no longer than six months from the date we accept a State's compliance plan.

(i)(1) Under limited circumstances, and subject to paragraph (i)(2) of this section, we may reduce the penalty if the State fails to completely correct or discontinue the violation pursuant to its corrective compliance plan and in a timely manner. To receive a reduced penalty, the State must demonstrate that it met one or both of the following conditions:

(i) Although it did not achieve full compliance, the State made substantial progress towards correcting or discontinuing the violation; or

(ii) The State's failure to comply fully was attributable to either a natural disaster or regional recession.

(2) We will not reduce a State's penalty:

(i) Under §§ 272.1(a)(4), (a)(9), (a)(11), or (a)(14) if we detect a significant pattern of diversion of families to a separate State program that achieves the effect of avoiding the work participation rates and the State fails to correct the diversion; or

(ii) Under §§ 272.1(a)(4), (a)(6), (a)(9), or (a)(11) if we detect a significant pattern of diversion of families to a separate State program that achieves the effect of diverting the Federal share of child support collections and the State fails to correct the diversion.

§ 272.7 How can a State appeal our decision to take a penalty?

(a) We will formally notify the chief executive officer of the State of an adverse action (i.e., the reduction in the SFAG) within five days after we determine that a State is subject to a penalty under parts 271 through 275 of this chapter.

(b) The State may file an appeal of the action, in whole or in part, to the HHS Departmental Appeals Board (the Board) within 60 days after the date it receives notice of the adverse action. The State must include the brief and all supporting documents with its appeal when it is filed. The State must send a copy of the appeal to the Office of the General Counsel, Children, Families and Aging Division, Room 411–D, 200 Independence Avenue, S.W., Washington, D.C. 20201.

(c) ACF must file its reply brief and supporting documentation within 30 days after the State files its appeal.

(d) The appeal to the Board must follow the provisions of the rules under this section and those at §§ 16.2, 16.9, 16.10, and 16.13 through 16.22 of this title.

(e) The Board will consider an appeal filed by a State on the basis of the documentation and briefs submitted, along with any additional information the Board may require to support a final decision. In deciding whether to uphold an adverse action or any portion of such action, the Board will conduct a thorough review of the issues and make a final determination within 60 days after the appeal is filed.

(f)(1) The filing date shall be the date materials are received by the Board in a form acceptable to it.

(2) If the Board requires additional documentation to reach its decision, the 60 days shall be tolled for a reasonable period, specified by the Board, to allow production of the documentation.

(g)(1) A State may obtain judicial review of a final decision by the Board by filing an action within 90 days after the date of such decision. It should file this action with the district court of the United States in the judicial district where the State agency is located or in the United States District Court for the District of Columbia.

(2) The district court will review the final decision of the Board on the record established in the administrative proceeding, in accordance with the standards of review prescribed by 5 U.S.C. 706(2). The court will base its review on the documents and supporting data submitted to the Board.

§ 272.8 What is the relationship of continuing waivers on the penalty process for work participation and time limits?

(a) In order for the State's alternative waiver requirements to be considered in the calculation of the work participation rate and the time limit requirement, the Governor must certify in writing to the Secretary:

(1) The specific inconsistencies (i.e., alternative waiver requirements) that the State chooses to continue;

(2) The reasons for continuing the alternative waiver requirements, including how their continuation is consistent with the purposes of the waiver; and

(3) Consistent with the waiver and its purpose, the standards that the State will use to:

(i) Assign individuals to the alternative waiver work activities or to an alternative number of hours; and

(ii) Determine exemptions from or extensions to the time limit.

(b) If a State using the alternative waiver requirements fails to meet the work participation rate or the time limit requirement:

(1) The State is not eligible for a reasonable cause exception from the applicable penalty under §§ 272.2 (a)(4) or (a)(9), nor for any reduction of the work penalty under §§ 271.51 (b)(3) or (c) of this chapter;

(2) The State must consider modification of its alternative waiver requirements as part of its corrective compliance plan; and

(3) If the State continues waivers related to the failure to achieve compliance with the work requirements described in subparts B and C of part 271 of this chapter or the time limits described in §§ 274.1 and 274.2 of this chapter and still fails to correct the violation, it will not be eligible for a reduced penalty for related noncompliance under § 272.6(i)(1).

(c) The Secretary will use the data submitted by the States pursuant to § 275.3 of this chapter to calculate and make public the work participation rates and the percentage of families with an adult that received Federal TANF benefits for more than 60 months under both the TANF requirement and the State's alternative waiver requirement.

PART 273—STATE TANF EXPENDITURES

Subpart A—What Rules Apply to a State's Maintenance of Effort?

Subpart B—What Rules Apply to the Use of Federal Funds?

Subpart C—What Rules Apply to Individual Development Accounts?

Authority: 42 U.S.C. 604, 607, 609, and 862a.

Subpart A—What Rules Apply to a State's Maintenance of Effort?

§ 273.0 What definitions apply to this part?

(a) Except as noted in § 273.2(d), the general TANF definitions at § 270.30 of this chapter apply to this part.

(b) *Administrative costs* means costs necessary for the proper administration of the TANF program or separate State programs. It includes the costs for general administration and coordination of these programs, including indirect (or overhead) costs. Examples of administrative costs include:

(1) Salaries and benefits and all other indirect (or overhead) costs not associated with providing program services (such as diversion, assessment, development of employability plans, work activities and post-employment services, and supports) to individuals;

(2) Preparation of program plans, budgets, and schedules;

(3) Monitoring of programs and projects;

(4) Fraud and abuse units;

(5) Procurement activities;

(6) Public relations;

(7) Services related to accounting, litigation, audits, management of property, payroll, and personnel;

(8) Costs for goods and services required for administration of the program such as rental and purchase of equipment, utilities, office supplies, postage, and rental and maintenance of office space;

(9) Travel costs incurred for official business;

(10) Management information systems not related to the tracking and monitoring of TANF requirements (e.g., for a personnel and payroll system for State staff); and

(11) Preparing reports and other documents related to program requirements.

§ 273.1 How much State money must a State expend annually to meet the TANF MOE requirement?

(a)(1) The minimum TANF MOE for a fiscal year is 80 percent of a State's historic State expenditures.

(2) However, if a State meets the minimum work participation rate requirements in a fiscal year, as required under §§ 271.21 and 271.23 of this chapter, then for that fiscal year, the minimum TANF MOE is 75 percent of the State's historic State expenditures.

(b) The TANF MOE level also depends on whether a Tribe or consortium of Tribes residing in a State has received approval to operate its own TANF program. The State's TANF MOE level for a fiscal year will be reduced the same percentage as the SFAG was reduced as the result of any Tribal Family Assistance Grants awarded to Tribal grantees in the State for that year.

§ 273.2 What kinds of State expenditures count toward meeting a State's annual MOE expenditure requirement?

(a) Expenditures of State funds in TANF or separate State programs may

count if they were made for the following types of services:

(1) Cash assistance, including assigned child support collected by the State, distributed to the family, and disregarded in determining eligibility for, and amount of the TANF assistance payment;

(2) Child care assistance (see § 273.3);

(3) Education activities designed to increase self-sufficiency, job training, and work (see § 273.4);

(4) Any other use of funds allowable under section 404(a)(1) of the Act and consistent with the goals at § 270.20 of this chapter; and

(5) Administrative costs for activities listed in paragraphs (a)(1) through (a)(4) of this section, if these costs do not exceed 15 percent of the total amount of countable expenditures. Information technology and computerization needed for tracking or monitoring services are excluded from this determination. ''Administrative costs'' has the meaning specified at § 273.0(b).

(b) The services listed under paragraph (a) of this section may be counted only if they have been provided to or on behalf of eligible families. An ''eligible family,'' as defined by the State, must:

(1) Be comprised of citizens, qualified aliens (as defined in § 270.30 of this chapter), non-immigrants under the Immigration and Nationality Act, aliens paroled into the U.S. for less than one year, or, in the case of aliens not lawfully present in the U.S., provided that the State enacted a law after August 22, 1996, that ''affirmatively provides'' for such services; and

(2) Include a child living with a custodial parent or other adult caretaker relative (or consist of a pregnant individual); and

(3) Be financially eligible according to the TANF income and resource standards established by the State under its TANF plan.

(c) Services listed under paragraph (a) of this section may also be provided to a family that meets the criteria under paragraphs (b) (1) and (2) of this section, but which became ineligible solely due to the time limitation given under § 274.1 of this chapter.

(d) Assistance does not have the meaning given in § 270.30 of this chapter, but for MOE purposes can be ongoing, short-term or one-time only and may include services.

(e) The expenditures for services in separate State programs listed under paragraph (a) of this section only count if they also meet the requirements of § 273.5. Expenditures that fall within the prohibitions in § 273.6 do not count.

§ 273.3 When do child care expenditures count?

(a) State funds expended to meet the requirements of the Matching Fund of the Child Care and Development Fund (i.e., match and MOE amounts) that also count as TANF MOE expenditures are limited to the State's child care MOE amount pursuant to section 418(a)(2)(C) of the Act.

(b) The child care expenditures must be made to or on behalf of eligible families, as defined in § 273.2(b).

§ 273.4 When do educational expenditures count?

(a) Expenditures for educational activities or services count if:

(1) They are targeted to eligible families (as defined in § 273.2(b)) to increase self-sufficiency, job training, and work; and

(2) They are not generally available to other residents of the State.

(b) Expenditures on behalf of eligible families for educational services or activities provided through the public education system do not count unless they meet the requirements under paragraph (a) of this section.

§ 273.5 When do expenditures in separate State programs count?

(a) If the expenditures in the separate State program(s) were previously authorized and were allowable under section 403 of prior law, then they may count in their entirety.

(b) If the expenditures under the separate State program(s) had not been previously authorized and allowable under section 403 of prior law, then only the amount expended in excess of money expended on such program(s) in FY 1995 may count.

§ 273.6 What kinds of expenditures do not count?

The following kinds of expenditures do not count:

(a) Expenditures of funds that originated with the Federal government;

(b) State funds that are used to match Federal funds (or expenditures of State funds that support claims for Federal matching funds), including State expenditures under the Medicaid program under title XIX of the Act;

(c) Expenditures that States make as a condition of receiving Federal funds under other programs except as provided under § 273.3;

(d) Expenditures made in a prior fiscal year;

(e) Expenditures used to match Federal Welfare-to-Work funds provided under section 403(a)(5) of the Act; and

(f) Expenditures made in the TANF program to replace the reductions in the SFAG as a result of penalties pursuant to § 274.50 of this chapter.

§ 273.7 How will we determine the level of State expenditures?

(a) Each State must report its expenditures quarterly to us as required under part 275 of this chapter.

(b) Each State must also submit an annual addendum to its TANF Financial Report (or, as applicable, its Territorial Financial Report) on separate State programs for the fourth quarter containing:

(1) A description of the specific State-funded program activities provided to eligible families;

(2) Each program's statement of purpose (how the program serves eligible families);

(3) The definitions of each work activity in which families in the program are participating;

(4) A statement whether the program/activity had been previously authorized and allowable as of August 21, 1996, under section 403 of prior law;

(5) The FY 1995 State expenditures for each program/activity not authorized and allowable as of August 21, 1996 (see § 273.5(b));

(6) The total number of eligible families served by each program as of the end of the fiscal year;

(7) The eligibility criteria for the families served under each program/activity; and

(8) A certification that those families served met the State's criteria for ''eligible families.''

§ 273.8 What happens if a State fails to meet the TANF MOE requirement?

(a) If any State fails to meet its TANF MOE requirement for any fiscal year, then we will reduce dollar-for-dollar the amount of the SFAG payable to the State for the following fiscal year.

(b) If a State fails to meet its TANF MOE requirement for any fiscal year, and the State received a Welfare-to-Work formula grant provided under section 403(a)(5)(A) of the Act for the same fiscal year, we will reduce the amount of the SFAG payable to the State for the following fiscal year by the amount of the Welfare-to-Work formula grant paid to the State.

§ 273.9 May a State avoid a TANF MOE penalty because of reasonable cause or through corrective compliance?

The reasonable cause and corrective compliance provisions at §§ 272.4, 272.5, and 272.6 of this chapter do not apply.

Subpart B—What Rules Apply to the Use of Federal Funds?

§ 273.10 What actions are to be taken against a State if it uses Federal TANF funds in violation of the Act?

(a) If a State misuses such funds, we will reduce the SFAG payable for the immediately succeeding fiscal year quarter by the amount misused.

(b) If we determine that the misuse was intentional, we will reduce the SFAG payable for the immediately succeeding fiscal year quarter in an amount equal to five percent of the adjusted SFAG.

(c) The reasonable cause and corrective compliance provisions of §§ 272.4 through 272.6 of this chapter apply to penalties under paragraphs (a) and (b) of this section.

§ 273.11 What uses of Federal TANF funds are improper?

(a) States may use Federal TANF funds for expenditures that:

(1) Are reasonably related to the purposes of TANF, as specified at § 270.20 of this chapter; or

(2) The State was authorized to use IV–A or IV–F funds under prior law, as in effect on September 30, 1995, or (at the option of the State) August 21, 1996.

(b) We will consider use of funds in violation of paragraph (a) of this section, the provisions of the Act, section 115 of PRWORA, the provisions of part 92 of this title, or OMB Circular A–87 to be misuse of funds.

§ 273.12 How will we determine if a State intentionally misused Federal TANF funds?

(a) The State must show, to our satisfaction, that it used the funds for purposes that a reasonable person would consider to be within the purposes of the TANF program (as specified at § 270.20 of this chapter) and the provisions listed in § 273.11.

(b) We will consider funds to be misused intentionally if there is supporting documentation, such as Federal guidance or policy instructions, indicating that Federal TANF funds could not be used for that purpose.

(c) We will also consider funds to be misused intentionally if, after notification that we have determined such use to be improper, the State continues to use the funds in the same or similarly improper manner.

§ 273.13 What types of activities are subject to the administrative cost limit on Federal TANF grants?

(a) Activities that fall within the definition of ''administrative costs'' at § 273.0(b) are subject to this limit.

(b) Information technology and computerization for tracking and monitoring are not administrative costs for this purpose.

Subpart C—What Rules Apply to Individual Development Accounts?

§ 273.20 What definitions apply to Individual Development Accounts (IDAs)?

The following definitions apply with respect to IDAs:

Date of acquisition means the date on which a binding contract to obtain, construct, or reconstruct the new principal residence is entered into.

Eligible educational institution means an institution described in section 481(a)(1) or section 1201(a) of the Higher Education Act of 1965 (20 U.S.C. 1088(a)(1) or 1141(a)), as such sections were in effect on August 21, 996. Also, an area vocational education school (as defined in subparagraph (C) or (D) of section 521(4) of the Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. 2471(4)) that is in any State (as defined in section 521(33) of such Act), as such sections were in effect on August 22, 1996.

Individual Development Account (IDA) means an account established by or for an individual who is eligible for TANF assistance to allow the individual to accumulate funds for specific purposes.

Post-secondary educational expenses means a student's tuition and fees required for the enrollment or attendance at an eligible educational institution, and required course fees, books, supplies, and equipment required at an eligible educational institution.

Qualified acquisition costs means the cost of obtaining, constructing, or reconstructing a residence. The term includes any usual or reasonable settlement, financing, or other closing costs.

Qualified business means any business that does not contravene State law or public policy.

Qualified business capitalization expenses means business expenses pursuant to a qualified plan.

Qualified entity means a non-profit, tax-exempt organization, or a State or local government agency that works cooperatively with a non-profit, tax-exempt organization.

Qualified expenditures means expenses entailed in a qualified plan, including capital, plant equipment, working capital, and inventory expenses.

Qualified first-time home buyer means a taxpayer (and, if married, the taxpayer's spouse) who has not owned a principal residence during the three-year period ending on the date of acquisition of the new principal residence.

Qualified plan means a business plan that is approved by a financial institution, or by a nonprofit loan fund having demonstrated fiduciary integrity. It includes a description of services or goods to be sold, a marketing plan, and projected financial statements, and it may require the eligible recipient to obtain the assistance of an experienced entrepreneurial advisor.

Qualified principal residence means the place a qualified first-time home buyer will reside in in accordance with the meaning of section 1034 of the Internal Revenue Code of 1986 (26 U.S.C. 1034). The qualified acquisition cost of the residence cannot exceed the average purchase price of similar residences in the area.

§ 273.21 May a State use the TANF grant to fund IDAs?

States may use TANF grants to fund IDAs for individuals who are eligible for TANF assistance.

§ 273.22 Are there any restrictions on IDA funds?

(a) A recipient may deposit only earned income into an IDA.

(b) A recipient's contributions to an IDA may be matched only by a qualified entity.

(c) A recipient may withdraw funds only for the following reasons:

(1) To cover post-secondary education expenses, if the amount is paid directly to an eligible educational institution;

(2) For the recipient to purchase a first home, if the amount is paid directly to the person to whom the amounts are due and it is a qualified acquisition cost for a qualified principal residence by a qualified first-time home buyer; or

(3) For business capitalization, if the amounts are paid directly to a business capitalization account in a federally-insured financial institution and used for a qualified business capitalization expense.

§ 273.23 How does a State prevent a recipient from using the IDA account for unqualified purposes?

To prevent recipients from using the IDA account improperly, States may do the following:

(a) Count withdrawals as earned income in the month of withdrawal (unless already counted as income);

(b) Count withdrawals as resources in determining eligibility; or

(c) Take such other steps as the State has established in its State plan or written State policies to deter inappropriate use.

PART 274—OTHER ACCOUNTABILITY PROVISIONS

Subpart A—What Specific Rules Apply for Other Program Penalties?

Subpart B—What are the Funding Requirements for the Contingency Fund?

Subpart C—What Rules Pertain Specifically to the Spending Levels of the Territories?

Authority: 31 U.S.C. 7501 *et seq.*; 42 U.S.C. 609, 654, 1302, 1308, and 1337.

Subpart A—What Specific Rules Apply for Other Program Penalties?

§ 274.0 What definitions apply to this part?

The general TANF definitions at § 270.30 of this chapter apply to this part.

§ 274.1 What restrictions apply to the length of time Federal TANF assistance may be provided?

(a)(1) Subject to the exceptions in this section, no State may use any of its Federal TANF funds to provide assistance (as defined in § 270.30 of this chapter) to a family that includes an adult who has received assistance for a total of five years (60 cumulative months, whether or not consecutive).

(2) Assistance provided under section 403(a)(5) of the Act (WTW) is not subject to the time limit in paragraph (a)(1) of this section.

(3) States may define ''a family that includes an adult,'' but may not exclude families from their definition solely for the purpose of avoiding penalties under § 274.2.

(i) States shall report to us annually on the number of families excluded because of the State's definition and the circumstances underlying each exclusion.

(ii) Where we find that a State has excluded families for the purpose of avoiding a penalty for the five-year time limit, we shall include those families in the calculation under paragraph (c) of this section in determining whether a State has complied with time-limit extension rules and is subject to the penalty described in § 274.2.

(b) States must not count towards the five-year limit:

(1) Any month of receipt of assistance by an individual when she was a minor who was not the head-of-household or married to the head-of-household;

(2) Any month in which an adult lived in Indian country (as defined in section 1151 of title 18, United States Code) or Native Alaskan Village and at least 50 percent of the adults were not employed; and

(3) Non-cash assistance provided under section 403(a)(5) of the Act (WTW).

(c) States have the option to extend assistance from Federal TANF funds beyond the five-year limit for up to 20 percent of their cases. This provision requires computation of an average monthly percentage for each fiscal year, with the numerator for each month equal to the number of families that includes an adult receiving assistance beyond the five-year limit and the denominator equal to the average monthly number of families that includes an adult receiving assistance during the fiscal year or the immediately preceding fiscal year, whichever the State elects. States are permitted to extend assistance to a family only on the basis of:

(1) Hardship, as defined by the State; or

(2) The fact that the family includes someone who has been battered, or subject to extreme cruelty based on the fact that the individual has been subjected to:

(i) Physical acts that resulted in, or threatened to result in, physical injury to the individual;

(ii) Sexual abuse;

(iii) Sexual activity involving a dependent child;

(iv) Being forced as the caretaker relative of a dependent child to engage in non-consensual sexual acts or activities;

(v) Threats of, or attempts at, physical or sexual abuse;

(vi) Mental abuse; or

(vii) Neglect or deprivation of medical care.

(d) If a State opts to extend assistance to part of its caseload as permitted under paragraph (c) of this section, it only determines whether or not the extension applies to a specific family once an adult in the family has received 60 cumulative months of assistance.

(e) If the five-year limit is inconsistent with a State's waiver granted under section 1115 of the Act, which was submitted before August 22, 1996, and was approved by July 1, 1997, the State need not comply with the inconsistent provisions of the five-year limit until the waiver expires.

(1) The five-year limit would be inconsistent with the State's waiver:

(i) If the State has an approved waiver that provides for terminating cash assistance to individuals or families because of the receipt of assistance for a period of time, specified by the approved waiver; and

(ii) The State would have to change its waiver policy in order to comply with the five-year limit.

(2)(i) Generally, under an approved waiver, a State will count, toward the five-year limit, all months for which the adult subject to a State waiver time limit receives assistance with Federal TANF

funds, just as it would if it did not have an approved waiver.

(ii) The State need not count, toward the five-year limit, any months for which an adult receives assistance with Federal TANF funds while the adult is exempt from the State's time limit under the terms of the State's approved waiver.

(3) The State may continue to provide assistance with Federal TANF funds for more than 60 cumulative months, without a numerical limit, to families provided extensions to the time limit, under the provisions of the terms and conditions of its approved waiver, as long as the State's waiver authority has not expired.

(4) The five-year limit would also be inconsistent with a State's waiver to the extent that the State needs to maintain prior law policies for control group or experimental treatment cases in order to continue an experimental research design for the purpose of completing an impact evaluation of the waiver policies.

(5) The additional requirements at § 272.8 of this chapter apply to the use of continuing waivers with alternative time-limit requirements in the calculation of the time limit penalty.

§ 274.2 What happens if a State does not comply with the five-year limit?

If we determine that a State has not complied with the requirements of § 274.1, we will reduce the SFAG payable to the State for the immediately succeeding fiscal year by five percent of the adjusted SFAG unless the State demonstrates to our satisfaction that it had reasonable cause or we approve a corrective compliance plan.

§ 274.3 How can a State avoid a penalty for failure to comply with the five-year limit?

(a) We will not impose the penalty if the State demonstrates to our satisfaction that it had reasonable cause for failing to meet the five-year limit or it completes a corrective compliance plan pursuant to §§ 272.5 and 272.6 of this chapter.

(b)(1) In addition, we will determine a State has reasonable cause if it demonstrates that it exceeded the 20 percent limitation on exceptions to the time limit because of good cause waivers provided to victims of domestic violence.

(2)(i) To demonstrate reasonable cause under paragraph (b)(1) of this section, a State must provide evidence that, when individuals with active good cause waivers and their families are excluded from the calculation, the percentage of families receiving federally-funded assistance for more than 60 months did not exceed 20 percent of the total.

(ii) To qualify for exclusion, such families must have good cause domestic violence waivers that:

(A) Reflect the State's assessment that an individual in the family was, at the time the waiver was granted, temporarily unable to work because of domestic violence;

(B) Were in effect after the family had received a hardship exemption from the limit on receiving federally-funded assistance for 60 or more months; and

(C) Were granted appropriately, in accordance with the criteria specified at § 270.30 of this chapter.

(iii) If a State fails to meet the criteria specified for ''good cause domestic violence waivers'' at § 270.30 of this chapter or any of the other conditions in paragraph (b)(2)(ii) of this section, the Secretary will not grant reasonable cause under paragraph (b)(1) of this section.

§ 274.10 Must States do computer matching of data records under IEVS to verify recipient information?

(a) States must meet the requirements of IEVS pursuant to section 1137 of the Act and request the following information from the Internal Revenue Service (IRS), the State Wage Information Collections Agencies (SWICA), the Social Security Administration (SSA), and the Immigration and Naturalization Service (INS):

(1) IRS unearned income;

(2) SWICA employer quarterly reports of income and unemployment insurance benefit payments;

(3) IRS earned income maintained by SSA; and

(4) Immigration status information maintained by the INS. (States may request a waiver of this match under the authority of 42 U.S.C. 1320–1327, note.)

(b) The requirements at §§ 205.51 through 205.62 of this chapter also apply to the TANF IEVS requirement.

§ 274.11 How much is the penalty for not participating in IEVS?

If we determine that the State has not complied with the requirements of § 274.10, we will reduce the SFAG payable for the immediately succeeding fiscal year by two percent of the adjusted SFAG unless the State demonstrates to our satisfaction that it had reasonable cause or we approve a corrective compliance plan pursuant to §§ 272.5 and 272.6 of this chapter.

§ 274.20 What happens if a State sanctions a single parent of a child under six who cannot get needed child care?

(a) If we determine that a State has not complied with the requirements of § 271.15 of this chapter, we will reduce the SFAG payable to the State by no more than five percent for the immediately succeeding fiscal year unless the State demonstrates to our satisfaction that it had reasonable cause or we approve a corrective action plan pursuant to §§ 272.5 and 272.6 of this chapter.

(b) We will impose the maximum penalty if:

(1) The State does not have a statewide process in place that enables families to demonstrate that they have been unable to obtain child care; or

(2) There is a pattern of substantiated complaints from parents or organizations verifying that a State has reduced or terminated assistance in violation of this requirement.

(c) We will impose a reduced penalty if the State demonstrates that the violations were isolated or that they affected a minimal number of families.

§ 274.30 What procedures exist to ensure cooperation with the child support enforcement requirements?

(a) The State (the IV–A agency) must refer all appropriate individuals in the family of a child, for whom paternity has not been established or for whom a child support order needs to be established, modified or enforced, to the child support enforcement agency (the IV–D agency). Those individuals must cooperate in establishing paternity and in establishing, modifying, or enforcing a support order with respect to the child.

(b) If the IV–D agency determines that an individual is not cooperating, and the individual does not qualify for a good cause or other exception established by the State in accordance with section 454(29) of the Act, then the IV–D agency must notify the IV–A agency promptly.

(c) The IV–A agency must then take appropriate action by:

(1) Deducting from the assistance that would otherwise be provided to the family of the individual an amount equal to not less than 25 percent of the amount of such assistance; or

(2) Denying the family any assistance under the program.

§ 274.31 What happens if a State does not comply with the IV–D sanction requirement?

(a)(1) If we find, for a fiscal year, that the State IV–A agency did not enforce the penalties against recipients required under § 274.30(c), we will reduce the SFAG payable for the next fiscal year by one percent of the adjusted SFAG.

(2) Upon a finding for a second fiscal year, we will reduce the SFAG by two percent of the adjusted SFAG for the following year.

(3) A third or subsequent finding will result in the maximum penalty of five percent.

(b) We will not impose a penalty if the State demonstrates to our satisfaction that it had reasonable cause or we approve a corrective compliance plan pursuant to §§ 272.5 and 272.6 of this chapter.

§ 274.40 What happens if a State does not repay a Federal loan?

(a) If a State fails to repay the amount of principal and interest due at any point under a loan agreement:

(1) The entire outstanding loan balance, plus all accumulated interest, becomes due and payable immediately; and

(2) We will reduce the SFAG payable for the immediately succeeding fiscal year quarter by the outstanding loan amount plus interest.

(b) Neither the reasonable cause provisions at § 272.5 of this chapter nor the corrective compliance plan provisions at § 272.6 of this chapter apply when a State fails to repay a Federal loan.

§ 274.50 What happens if, in a fiscal year, a State does not expend, with its own funds, an amount equal to the reduction to the adjusted SFAG resulting from a penalty?

(a) We will assess a penalty of no more than two percent of the adjusted SFAG plus the amount equal to the difference between the amount the State was required to expend and the amount it actually expended in the fiscal year.

(1) We will take the full two percent of the adjusted SFAG plus the amount the State was required to expend if the State made no additional expenditures to compensate for reductions to its adjusted SFAG resulting from penalties.

(2) We will reduce the percentage portion of the penalty if the State has expended some of the amount required. In such case, we will calculate the applicable percent by multiplying the percentage of the required expenditures actually made in the fiscal year by two percent.

(b) The reasonable cause and corrective compliance plan provisions at §§ 272.4, 272.5, and 272.6 of this chapter do not apply to this penalty.

(c) State expenditures that are used to replace reductions to the SFAG as the result of TANF penalties must be used for expenditures made under the State TANF program, not under ''separate State programs.''

Subpart B—What are the Funding Requirements for the Contingency Fund?

§ 274.70 What funding restrictions apply to the use of contingency funds?

(a) Contingency funds are available to a State only if expenditures by the State, excluding all Federal funds but the contingency funds, exceed the State's historic State expenditures.

(b) The maximum amount payable to a State in a fiscal year may not exceed an amount equal to 1/12 times 20 percent of that State's SFAG for that fiscal year, multiplied by the number of eligible months for which the State has requested contingency funds.

§ 274.71 How will we determine 100 percent of historic State expenditures, the MOE level, for the annual reconciliation?

(a)(1) The State historic State expenditures, the MOE level, include the State share of expenditures for AFDC benefit payments, administration, FAMIS, EA, and the JOBS programs for FY 1994.

(2) We will use the same data sources and date, i.e., April 28, 1995, that we used to determine the TANF MOE levels for FY 1994. We will exclude the State share of expenditures from the former IV-A child care programs (AFDC/JOBS, Transitional and At-Risk child care) in the calculation.

(b) We will reduce a State's MOE level for the Contingency Fund by the same percentage that we reduce the TANF MOE level for any fiscal year in which the State's SFAG annual allocation is reduced to provide funding to Tribal grantees operating a Tribal TANF program.

§ 274.72 For the annual reconciliation requirement, what restrictions apply in determining qualifying State expenditures?

Qualifying State expenditures are expenditures of State funds made in the State TANF program, excluding child care expenditures.

§ 274.73 What other requirements apply to qualifying State expenditures?

The regulations at §§ 273.2 (except for § 273.2(a)(2)), 273.4, and 273.6 of this chapter apply.

§ 274.74 When must a State remit contingency funds under the annual reconciliation?

(a) A State may retain its contingency funds only if it matches them with the expenditure of State funds above a specified MOE level. If the amount of contingency funds paid to a State for a fiscal year exceeds the amount equal to qualifying State expenditures (as defined at § 274.72), plus contingency funds, minus the MOE level, multiplied by the Federal Medical Assistance Percentage (FMAP), then multiplied by 1/12 times the number of months the State received contingency funds, then such excess amount must be remitted.

(b) If a State does not meet its MOE requirement, all contingency funds paid to a State for a fiscal year must be remitted.

(c) If required to remit funds, the State must remit all (or a portion) of the funds paid to it for a fiscal year within one year after it has failed to meet either the Food Stamp trigger or the Unemployment trigger for three consecutive months.

§ 274.75 What action will we take if a State fails to remit funds as required?

(a) If a State fails to remit funds as required, we will reduce the SFAG payable for the next fiscal year by the amount of funds not remitted.

(b) A State may appeal this decision as provided in § 272.7 of this chapter.

(c) The reasonable cause exceptions and corrective compliance regulations at §§ 272.5 and 272.6 of this chapter do not apply to this penalty.

§ 274.76 How will we determine if a State has met its Contingency Fund reconciliation MOE level requirement and made expenditures that exceed its MOE requirement?

(a) States receiving contingency funds for a fiscal year must complete the quarterly TANF Financial Report (or, as applicable, the Territorial Financial Report). As part of the fourth quarter's report, a State must complete its annual reconciliation.

(b) The TANF Financial Report and State reporting on expenditures are subject to our review.

§ 274.77 Are contingency funds subject to the same restrictions that apply to other Federal TANF funds?

As Federal TANF funds, contingency funds are subject to the restrictions and prohibitions in effect for Federal TANF funds. The provisions of § 273.11 of this chapter apply.

Subpart C—What Rules Pertain Specifically to the Spending Levels of the Territories?

§ 274.80 If a Territory receives Matching Grant funds, what funds must it expend?

(a) If a Territory receives Matching Grant funds under section 1108(b) of the Act, it must:

(1) Contribute 25 percent of expenditures funded under the Matching Grant for title IV–A or title IV–E expenditures;

(2) Expend up to 100 percent of the amount of historic expenditures for FY

1995 for the AFDC program (including administrative costs and FAMIS), the EA program, and the JOBS program; and

(3) Expend up to 100 percent of the amount of the Family Assistance Grant annual allocation using Federal TANF, title IV–E funds and/or Territory-only funds.

(b) Territories may not use the same Territorial expenditures to satisfy the requirements of paragraph (a) of this section.

§ 274.81 What expenditures qualify for Territories to meet the Matching Grant MOE requirement?

To meet the Matching Grant MOE requirements, Territories may count:

(a) Territorial expenditures made pursuant to §§ 273.2, 273.3, 273.4, and 273.6 of this chapter that are commingled with Federal TANF funds or made under a segregated TANF program; and

(b) Territorial expenditures made pursuant to the regulations at 45 CFR parts 1355 and 1356 for the Foster Care and Adoption Assistance programs and section 477 of the Act for the Independent Living program.

§ 274.82 What expenditures qualify for meeting the Matching Grant FAG amount requirement?

To meet the Matching Grant FAG amount requirement, Territories may count:

(a) Expenditures made with Federal TANF funds pursuant to § 273.11 of this chapter;

(b) Expenditures made pursuant to §§ 273.2, 273.3, 273.4, and 273.6 of this chapter that are commingled with Federal TANF funds or made under a segregated TANF program;

(c) Amounts transferred from TANF funds pursuant to section 404(d) of the Act; and

(d) The Federal and Territorial shares of expenditures made pursuant to the regulations at 45 CFR parts 1355 and 1356 for the Foster Care and Adoption Assistance programs and section 477 of the Act for the Independent Living program.

§ 274.83 How will we know if a Territory failed to meet the Matching Grant funding requirements at § 274.80?

We will require the Territories to report the expenditures required by § 274.80 (a)(2) and (a)(3) on the quarterly Territorial Financial Report.

§ 274.84 What will we do if a Territory fails to meet the Matching Grant funding requirements at § 274.80?

If a Territory does not meet the requirements at either or both of § 274.80 (a)(2) and (a)(3), we will disallow all Matching Grant funds received for the fiscal year.

§ 274.85 What rights of appeal are available to the Territories?

The Territories may appeal our decisions to the Departmental Appeals Board in accordance with our regulations at part 16 of this title if we decide to take disallowances under 1108(b).

PART 275—DATA COLLECTION AND REPORTING REQUIREMENTS

Sec.

Authority: 42 U.S.C. 603, 605, 607, 609, 611, and 613.

§ 275.1 What does this part cover?

(a) This part explains how we will collect the information required by section 411(a) of the Act (data collection and reporting); the information required to implement section 407 of the Act (work participation requirements), as authorized by section 411(a)(1)(A)(xii); the information required to implement section 409 (penalties), section 403 (grants to States), section 405 (administrative provisions), section 411(b) (report to Congress), and section 413 (research and annual rankings); and the data necessary to carry out our financial management and oversight responsibilities.

(b) This part describes the information in the quarterly and annual reports that each State must file, as follows:

(1) The case record information (disaggregated and aggregated) on individuals and families in the quarterly TANF Data Report;

(2) The expenditure data in the quarterly TANF Financial Report (or, as applicable, the Territorial Financial Report);

(3) The annual information related to definitions and expenditures that must be filed with the fourth quarter Financial Report; and

(4) The annual information on State programs and performance for the report to Congress.

(c) If a State claims MOE expenditures under a separate State program, this part specifies the circumstances under which the State must collect and report case-record information on individuals and families served by the separate State program.

(d) This part describes when reports are due, how we will determine if reporting requirements have been met, and how we will apply the statutory penalty for failure to file a timely report. It also specifies electronic filing and sampling requirements.[1]

§ 275.2 What definitions apply to this part?

(a) Except as provided in paragraph (b) of this section, the general TANF definitions at § 270.30 of this chapter apply to this part.

(b) For data collection and reporting purposes only, *TANF family* means:

(1) All individuals receiving assistance as part of a family under the State's TANF or separate State program; and

(2) The following additional persons living in the household, if not included under paragraph (b)(1) of this section:

(i) Parent(s) or caretaker relative(s) of any minor child receiving assistance;

(ii) Minor siblings of any child receiving assistance; and

(iii) Any person whose income or resources would be counted in determining the family's eligibility for or amount of assistance.

§ 275.3 What reports must the State file on a quarterly basis?

(a) *Quarterly reports.* Each State must collect on a monthly basis, and file on a quarterly basis, the data specified in the TANF Data Report and the TANF Financial Report (or, as applicable, the Territorial Financial Report). Under the circumstances described in paragraph (d)(1) of this section, the State must collect and file the data specified in the TANF-MOE Data Report.

(b) *TANF Data Report.* The TANF Data Report consists of three sections. Two sections contain disaggregated data elements and one section contains aggregated data elements.

(1) *TANF Data Report: Disaggregated Data—Sections one and two.* Each State must file disaggregated information on families receiving TANF assistance (section one) and families no longer receiving TANF assistance (section

[1] The Appendices contain the specific data elements in the quarterly Data Report and the quarterly Financial Report, as well as the instructions for filing these reports. The Appendices also contain a summary of the applicable sampling specifications and three reference tables that summarize the statutory basis and rationale for collecting the data elements in the Data Report.

two).[2] These two sections specify identifying and demographic data such as the individual's Social Security Number; and information such as the type and amount of assistance received, educational level, employment status, work participation activities, citizenship status, and earned and unearned income. These reports also specify items pertaining to child care and child support. The data requested cover adults (including non-custodial parents who are participating in work activities) and children.

(2) *TANF Data Report: Aggregated Data—Section three.* Each State must file aggregated information on families receiving, applying for, and no longer receiving TANF assistance.[3] This section of the Report asks for aggregate figures in the following areas: the total number of applications and their disposition; the total number of recipient families, adult recipients, and child recipients; the total number of births, out-of-wedlock births, and minor child heads-of-households; the total number of non-custodial parents participating in work activities; and the total amount of TANF assistance provided.

(c) *The TANF Financial Report (or Territorial Financial Report).* (1) Each State must file quarterly expenditure data on the State's use of Federal TANF funds, State TANF expenditures, and State expenditures of MOE funds in separate State programs.[4]

(2) In addition, each State must file annually with the fourth quarter TANF Financial Report (or, as applicable, the Territorial Financial Report) definitions and descriptive information on the TANF program and descriptive and expenditure-related information on the State's separate MOE program as specified in § 275.9.

(3) If a State makes a substantive change in its definition of work activities, its description of transitional services provided to families no longer receiving assistance due to employment under the TANF program, or how it reduces the amount of assistance when an individual refuses to engage in work, as specified in § 275.9, it must file a copy of the changed definition or description with the next quarterly report. The State must also indicate the effective date of the change.

(4) If a State is expending TANF funds received in prior fiscal years, it must file a separate quarterly TANF Financial Report (or, as applicable, Territorial Financial Report) for each fiscal year that provides information on the expenditures of that year's TANF funds.

(5) Territories must report their expenditure and other fiscal data on the Territorial Financial Report, as provided at § 274.85 of this chapter, in lieu of the TANF Financial Report.

(d) *TANF—MOE Data Report.* (1) If a State claims MOE expenditures under a separate State program, it must collect and file similar disaggregated and aggregated information on families receiving and families no longer receiving assistance under the separate State program if it wishes to:

(i) Receive a high performance bonus;

(ii) Qualify for work participation caseload reduction credit; or

(iii) Be considered for a reduction in the penalty for failing to meet the work participation requirements.

(2) The TANF–MOE Data Report consists of three sections. Two sections contain disaggregated data elements and one contains aggregated data elements.[5] Except for data elements that do not apply to individuals and families under the MOE program, such as time limits, the data elements in the TANF–MOE Data Report are the same as those in the TANF Data Report as described in paragraph (b) of this section.

§ 275.4 When are quarterly reports due?

(a) Each State must file the TANF Data Report and the TANF Financial Report (or, as applicable, the Territorial Financial Report), including the addendum to the fourth quarter Financial Report, within 45 days following the end of the quarter.

(b) The State may collect and submit its TANF–MOE Data Report quarterly at the same time as it submits its TANF Data Report, or the State may submit this report at the time it seeks to be considered for a high performance bonus, a caseload reduction credit, or a reduction in the work participation rate penalty as long as the data submitted are for the full period for which these decisions will be made.

(c) The effective date for filing these reports depends on when the State implemented the TANF program as follows:

(1) If a State implemented the TANF program by January 1, 1997, the first reports cover the July–September 1997 quarter and are due November 14, 1997.

(2) If a State implemented its TANF program between January 1, 1997, and July 1, 1997, the first reports cover the period that begins six months after the date of implementation and are due 45 days following the end of the applicable quarter.

§ 275.5 May States use sampling?

(a) Each State may report the disaggregated data in the TANF Data Report and in the TANF–MOE Data Report on all recipient families or on a sample of families selected through the use of a scientifically acceptable sampling method that we have approved. States may not use a sample to generate the aggregated data.[6]

(b) ''Scientifically acceptable sampling method'' means a probability sampling method in which every sampling unit in the population has a known, non-zero chance to be included in the sample and our sample size requirements are met.

§ 275.6 Must States file reports electronically?

Each State must file all quarterly reports (i.e., the TANF Data Report, the TANF Financial Report (or, as applicable, the Territorial Financial Report), and the TANF–MOE Data Report) electronically, based on format specifications that we will provide.

§ 275.7 How will we determine if the State is meeting the quarterly reporting requirements?

(a) Each State's quarterly reports (the TANF Data Report, the TANF Financial Report (or Territorial Financial Report), and the TANF–MOE Data Report) must be complete and accurate and filed by the due date.

(b) For a disaggregated data report, ''a complete and accurate report'' means that:

(1) The reported data accurately reflect information available to the State in its case records, financial records, and automated data systems;

(2) The data are free from computational errors and are internally consistent (e.g., items that should add to totals do so);

(3) The data are reported for all elements (i.e., no data are missing);

(4)(i) The data are provided for all families; or

(ii) If the State opts to use sampling, the data are provided for all families selected in a sample that meets the minimum sample size requirements (except for families listed in error); and

(5) Where estimates are necessary (e.g., some types of assistance may require cost estimates), the State uses reasonable methods to develop these estimates.

[2] See Appendices A and B for the specific data elements we are proposing.

[3] See Appendix C for the specific data elements we are proposing.

[4] See Appendix D for the proposed content of the TANF Financial Report.

[5] See Appendices E through G for the proposed reporting requirements.

[6] See Appendix H for a summary of the applicable sampling specifications.

(c) For an aggregated data report, ''a complete and accurate report'' means that:

(1) The reported data accurately reflect information available to the State in its case records, financial records, and automated data systems;

(2) The data are free from computational errors and are internally consistent (e.g., items that should add to totals do so);

(3) The data are reported for all applicable elements; and

(4) Monthly totals are unduplicated counts for all families (e.g., the number of families and the number of out-of-wedlock births are unduplicated counts).

(d) For the TANF Financial Report (or, as applicable, the Territorial Financial Report), ''a complete and accurate report'' means that:

(1) The reported data accurately reflect information available to the State in its case records, financial records, and automated data systems;

(2) The data are free from computational errors and are internally consistent (e.g., items that should add to totals do so);

(3) The data are reported for all applicable elements; and

(4) All expenditures have been made in accordance with § 92.20(a) of this title.

(e) We will review the data filed in the quarterly reports to determine if they meet these standards. In addition, we will use audits and reviews to verify the accuracy of the data filed by the States.

(f) States must maintain records to adequately support any report in accordance with § 92.42 of this title.

§ 275.8 Under what circumstances will a State be subject to a reporting penalty for failure to submit quarterly reports?

(a) We will impose a reporting penalty under § 272.1(a)(3) of this chapter if:

(1) A State fails to file the TANF Data Report and the TANF Financial Report (or, as applicable, the Territorial Financial Report) on a timely basis;

(2) The disaggregated data in the TANF Data Report is not accurate or does not include all the data required by section 411(a) of the Act (other than section 411(a)(1)(A)(xii) of the Act) or those nine additional elements necessary to carry out the data collection system requirements;

(3) The aggregated data in the TANF Data Report does not include complete and accurate information on the data elements required by section 411(a) of the Act and the data elements necessary to carry out the data collection system requirements and verify and validate disaggregated data;

(4) The TANF Financial Report (or, as applicable, the Territorial Financial Report) does not contain complete and accurate information on total expenditures and expenditures on administrative costs and transitional services; or

(5) The addendum to the fourth quarter TANF Financial Report (or, as applicable, the Territorial Financial Report) does not contain the information required under §§ 271.22, 271.24, and 274.1 of this chapter on families excluded from the calculations in those sections because of the State's definition of families receiving assistance; the definition of work activities; and the description of transitional services provided by a State to families no longer receiving assistance due to employment.

(b) We will not apply the reporting penalty to the TANF–MOE Data Report, the annual program and performance report specified in § 275.9, or other information on individuals and families required by section 411(b) of the Act.

(c) If we determine that a State meets one or more of the conditions set forth in paragraph (a) of this section, we will notify the State that we intend to reduce the SFAG payable for the immediately succeeding fiscal year.

(d) We will not impose the penalty at § 272.1(a)(3) of this chapter if the State files the complete and accurate reports before the end of the fiscal quarter that immediately succeeds the fiscal quarter for which the reports were required.

(e) If the State does not file all reports as required by the end of the immediately succeeding fiscal quarter, the penalty provisions of §§ 272.4 through 272.6 of this chapter will apply.

(f) For each quarter for which the State fails to meet a reporting requirement, we will reduce the SFAG payable by an amount equal to four percent of the adjusted SFAG.

§ 275.9 What information must the State file annually?

(a) Each State must file annually, as an addendum to the fourth quarter TANF Financial Report (or, as applicable, the Territorial Financial Report), the following definitions and information with respect to the TANF program for that year:

(1) The number of families excluded from the calculations at §§ 271.22, 271.24, and 274.1 of this chapter because of the State's definition of families receiving assistance, together with the basis for such exclusions;

(2) The State's definition of each work activity;

(3) A description of the transitional services provided to families no longer receiving assistance due to employment; and

(4) A description of how a State will reduce the amount of assistance payable to a family when an individual refuses to engage in work without good cause.

(b) Each State must also file with the fourth quarter TANF Financial Report (or, as applicable, the Territorial Financial Report) the information on separate State MOE programs for that year specified at § 273.7 of this chapter.[7]

(c) Each State must file an annual program and performance report that provides information about the characteristics and achievements of each State program; the design and operation of the program; the services, benefits, assistance provided; the eligibility criteria; and the extent to which the State has met its goals and objectives for the program. Each State may also include a description of any unique features, accomplishments, innovations, or additional information appropriate for the Department's annual report to Congress.

§ 275.10 When are annual reports due?

(a) The annual report of State definitions and expenditures required by § 275.9 (a) and (b) is due at the same time as the fourth quarter TANF Financial Report (or, as applicable, the Territorial Financial Report).

(b) The annual program and performance report to meet the requirements of section 411(b) of the Act (report to Congress) is due 90 days after the end of the fiscal year. The first report, covering FY 1997, is due December 30, 1997.

Note: The following appendixes will not appear in the Code of Federal Regulations.

Appendices

Appendix A—Proposed TANF Data Report—Section One (Disaggregated Data Collection for Families Receiving Assistance under the TANF Program)

Appendix B—Proposed TANF Data Report—Section Two (Disaggregated Data Collection for Families No Longer Receiving Assistance under the TANF Program)

Appendix C—Proposed TANF Data Report—Section Three (Aggregated Data Collection for Families Applying for, Receiving, and No Longer Receiving Assistance under the TANF Program)

Appendix D—Proposed TANF Financial Report and Fourth Quarter Addendum

Appendix E—Proposed TANF MOE Data Report—Section One (Disaggregated Data Collection for Families Receiving Assistance under the Separate State Programs)

[7] See Section 3 of Appendix D for the specific information we are proposing to collect.

Appendix A—TANF Data Report—Section One—Disaggregated Data Collection for Families Receiving Assistance Under the TANF Program

Instructions and Definitions

General Instruction: The State agency or Tribal grantee should collect and report data for each data element, unless explicitly instructed to leave the field blank.

1. *State FIPS Code:* Enter your two-digit State code from the following listing. These codes are the standard codes used by the National Institute of Standards and Technology. Tribal grantees should leave this field blank.

State	Code
Alabama	01
Alaska	02
American Samoa	60
Arizona	04
Arkansas	05
California	06
Colorado	08
Connecticut	09
Delaware	10
District of Columbia	11
Florida	12
Georgia	13
Guam	66
Hawaii	15
Idaho	16
Illinois	17
Indiana	18
Iowa	19
Kansas	20
Kentucky	21
Louisiana	22
Maine	23
Maryland	24
Massachusetts	25
Michigan	26
Minnesota	27
Mississippi	28
Missouri	29
Montana	30
Nebraska	31
Nevada	32
New Hampshire	33
New Jersey	34
New Mexico	35
New York	36
North Carolina	37
North Dakota	38
Ohio	39
Oklahoma	40
Oregon	41
Pennsylvania	42
Puerto Rico	72
Rhode Island	44
South Carolina	45
South Dakota	46
Tennessee	47
Texas	48
Utah	49
Vermont	50
Virgin Islands	78
Virginia	51
Washington	53
West Virginia	54
Wisconsin	55
Wyoming	56

2. *County FIPS Code:* Enter the three-digit code established by the National Institute of Standards and Technology for classification of counties and county equivalents. Codes were devised by listing counties alphabetically and assigning sequentially odd codes is available in Appendix F of the TANF Sampling and Statistical Methods Manual. Tribal grantees should leave this field blank.

3. *Tribal Code:* For Tribal grantees, enter the three-digit Tribal code that represents your Tribe (See Appendix E of the TANF Sampling and Statistical Methods Manual for a complete listing of Tribal Codes). State agencies should leave this field blank.

4. *Reporting Month:* Enter the four-digit year and two-digit month code that identifies the year and month for which the data are being reported.

5. *Stratum:*

Guidance: All TANF families selected in the sample from the same stratum must be assigned the same stratum code. Valid stratum codes may range from ''00'' to ''99.'' States and Tribes with stratified samples should provide the ACF Regional Office with a listing of the numeric codes utilized to identify any stratification. If a State or Tribe opts to provide data for its entire caseload, enter the same stratum code (any two-digit number) for each TANF family.

Instruction: Enter the two-digit stratum code.

Family-Level Data

Definition: For reporting purposes, the TANF family means (a) all individuals receiving assistance as part of a family under the State's TANF Program; and (b) the following additional persons living in the household, if not included under (a) above:

(1) Parent(s) or caretaker relative(s) of any minor child receiving assistance;

(2) Minor siblings (including unborn children) of any child receiving assistance; and

(3) Any person whose income or resources would be counted in determining the family's eligibility for or amount of assistance.

6. *Case Number—TANF:*

Guidance: If the case number is less than the allowable eleven characters, a State may use lead zeros 1to fill in the number.

Instruction: Enter the number assigned by the State agency or Tribal grantee to uniquely identify the case after formal approval to receive assistance.

7. *ZIP Code:* Enter the five-digit ZIP code for the TANF family's place of residence for the reporting month.

8. *Funding Stream:* For States that bifurcate their caseloads, enter the appropriate code for the funding stream used to provide assistance to this TANF family. If the State (Tribe) does not bifurcate its caseload, enter code ''1.''

1=Funded, in whole or in part, with Federal TANF block grant funds
2=Funded entirely from State-only funds (segregated State TANF program) which are subject to TANF rules.

9. *Disposition:*

Guidance: A family that did not receive any assistance for the reporting month but was listed on the monthly sample frame for the reporting month is ''listed in error.'' States are to complete data collection for all sampled cases that are not listed in error.

Instruction: Enter one of the following codes for each TANF sampled case.

1=Data collection completed
2=Not subject to data collection/listed in error

10. *New Applicant:*

Guidance: A newly-approved applicant means the current reporting month is the first month for which the TANF family has received TANF assistance (and thus has had a chance to be selected into the TANF sample). This may be either the first month that the TANF family has ever received assistance or the first month of a new spell on assistance. A TANF family that is reinstated from a suspension is not a newly, approved applicant.

Instruction: Enter the one-digit code that indicates whether or not the TANF family is a newly-approved applicant.

1=Yes, a newly-approved application
2=No

11. *Number of Family Members:* Enter two digits that represent the number of members in the family receiving assistance under the State's (Tribe's) TANF Program during the reporting month.

12. *Type of Family for Work Participation:*

Guidance: This data element will be used to identify the type of family (*i.e.,* the number of parents or care-taker relatives in the family receiving assistance) in order to calculate the all family and the two-parent family work participation rates. A family with a minor child head-of-household should be coded as either a single-parent family or two-parent family, whichever is appropriate. A family that includes a disabled parent will not be considered a two-parent family for purposes of the work participation rate. A noncustodial parent, who lives in the State, may participate in work activities funded under the State TANF Program and receive other assistance. In order for the noncustodial parent to participate in work activities and receive assistance, (s)he must be a member of the eligible family receiving assistance and be reported as part of the TANF family. However, it is up to the State to consider whether a family with a non-custodial parent is a one-parent or two-parent family for the purposes of calculating the work participation rate.

Instruction: Enter the one-digit code that represents the type of family for purposes of calculating the work participation rates.

1=Single-Parent Family for participation rate purposes
2=Two-Parent Family for participation rate purposes
3=No Parent Family for participation rate purposes (does not include parents, care-taker relatives, or minor child heads-of-household

13. *Receives Subsidized Housing:*

Guidance: Subsidized housing refers to housing for which money was paid by the Federal, State, or Local government or through a private social service agency to the family or to the owner of the housing to assist the family in paying rent. Two families sharing living expenses does not constitute subsidized housing.

Instruction: Enter the one-digit code that indicates whether or not the TANF family received subsidized housing for the reporting month.

1=Public housing
2=HUD rent subsidy
3=Other rent subsidy
4=No housing subsidy

14. *Receives Medical Assistance:* Enter ''1'' if, for the reporting month, any TANF family member is eligible to receive (*i.e.,* a certified recipient of) medical assistance under the State plan approved under Title XIX or ''2'' if no TANF family member is eligible to receive medical assistance under the State plan approved under Title XIX.

1=Yes, receives medical assistance
2=No

15. *Receives Food Stamps:* If the TANF family received Food Stamps for the reporting month, enter the one-digit code indicating the type of Food Stamp assistance. Otherwise, enter ''4.''

1=Yes, Food Stamp coupon allotment
2=Yes, cash
3=Yes, wage subsidy
4=No

16. *Amount of Food Stamp Assistance:*

Guidance: For situations in which the Food Stamp household differs from the TANF family, code this element in a manner that most accurately reflects the resources available to the TANF family.

Instruction: Enter the TANF family's authorized dollar amount of Food Stamp assistance for the reporting month.

17. *Receives Subsidized Child Care:*

Guidance: For the purpose of coding this data element, ubsidized Child Care funded under the Child Care and Development Fund with funds that were transferred from the State TANF Program should be coded as ''2.''

Instruction: If the TANF family receives subsidized child care for the reporting month, enter code ''1'', ''2'', ''3'', or ''4'', whichever is appropriate. Otherwise, enter code ''5.''

1=Yes, funded under the State (Tribal) TANF Program
2=Yes, funded under the Child Care and Development Fund
3=Yes, funded under another Federal program (e.g., SSBG)
4=Yes, funded under a State, Tribal, or local program
5=No

18. *Amount of Subsidized Child Care:*

Guidance: Subsidized child care means a grant by the Federal, State or Local government to a parent (or care-taker relative) to support, in part or whole, the cost of child care services provided by an eligible provider to an eligible child. The grant may be paid directly to the parent (or care-taker relative) or to a child care provider on behalf of the parent (or care-taker relative).

Instruction: Enter the dollar amount of subsidized child care that the TANF family has received for services in the reporting month. If the TANF family did not receive any subsidized child care for the reporting month, enter ''00.''

19. *Amount of Child Care Disregard:* Enter the total dollar amount of the TANF family's actual disregard allowed for child care expenses during the reporting month. If there is no child care disregard, enter ''0'' as the amount.

20. *Amount of Child Support:* Enter the total dollar value of child support received on behalf of the TANF family in the reporting month, which includes arrearages, recoupments, and pass-through amounts whether paid to the State or the family.

21. *Amount of the Family's Cash Resources:* Enter the total dollar amount of the TANF family's cash resources for the reporting month.

Amount of Assistance Received and the Number of Months that the Family Has Received Each Type of Assistance under the State (Tribal) TANF Program:

Guidance: Assistance means every form of support provided to TANF families under the State (Tribal) TANF Program (including child care, work subsidies, and allowances to meet living expenses), except for the following:

(1) services that have no direct monetary value to an individual family and that do not involve implicit or explicit income support, such as counseling, case management, peer support and employment services that do not involve subsidies or other forms of income support; and

(2) one-time, short-term assistance (*i.e.,* assistance paid within a 30-day period, no more than once in any twelve-month period, to meet needs that do not extend beyond a 90-day period, such as automobile repair to retain employment and avoid welfare receipt and appliance repair to maintain living arrangements).

Instruction: For each type of assistance provided under the State's (Tribal) TANF Program, enter the dollar amount of assistance that the TANF family received or that was paid on behalf of the TANF family for the reporting month and the number of months that the TANF family has received assistance under the State's (Tribe's) TANF program. If, for a ''type of assistance'', no dollar amount of assistance was provided during the reporting month, enter ''0'' as the amount. If, for a ''type of assistance'', no assistance has been received (since the State began its TANF Program) by the TANF eligible family, enter ''0'' as the number of months of assistance.

22. *Cash and Cash Equivalents:*

A. *Amount*
B. *Number of Months*

23. *Educational:*

A. *Amount*
B. *Number of Months*

24. *Employment Services:*

A. *Amount*
B. *Number of Months*

25. *Work Subsidies:*

A. *Amount*
B. *Number of Months*

26. *TANF Child Care:*

Guidance: Include only the child care funded directly by the State (Tribal) TANF Program. Do not include child care funded under the Child Care and Development Fund, even though some of the funds were transferred to the CCDF from the TANF program.

A. *Amount*
B. *Number of Months*

27. *Transportation:*

A. *Amount*
B. *Number of Months*

28. *Other Supportive Services and Special Needs, including Assistance with Meeting Home Heating and Air Conditioning Costs:*

A. *Amount*
B. *Number of Months*

29. *Transitional Services:*

A. *Amount*
B. Number of Months

30. *Contributions to Individual Development Accounts:*

A. *Amount*
B. *Number of Months*

31. *Other:*

A. *Amount*
B. *Number of Months*

Reason for and Amount of Reduction in Assistance. For each reason for which the TANF family received a reduction in assistance for the reporting month, enter the dollar amount of the reduction in assistance. Otherwise, enter ''0.''

32. *Work Requirements Sanction*
33. *Family Sanction for an Adult with No High School Diploma or Equivalent*
34. *Sanction for Teen Parent not Attending School*
35. *Non-Cooperation with Child Support*
36. *Failure to Comply with an Individual Responsibility Plan*
37. *Other Sanction*
38. *Recoupment of Prior Overpayment*
39. *Family Cap*
40. *Reduction Based on Family Moving into State From Another State*
41. *Reduction Based on Length of Receipt of Assistance*
42. *Other, Non-sanction*
43. *Waiver Evaluation Research Group:*

Guidance: In connection with waivers, approved to allow States to implement Welfare Reform Demonstrations, a State assigned a portion of its cases to a research group consisting of a control group (subject to the provisions of the regular, statutory AFDC program as defined by prior law) and an experimental group (subject to the provisions of the regular, statutory AFDC

program as defined by prior law as modified by waivers). A state may choose, for the purpose of completing impact analyses, to continue a research group and thus maintain applicable control and experimental group treatment policies as they were implemented under their welfare reform demonstration (including prior law policies not modified by waivers), even if such policies are inconsistent with TANF. However, cases assigned to a non-experimental treatment group (*i.e.*, not part of the research group) may not apply prior law policies inconsistent with TANF unless such policies are specifically linked to approved waivers. Where a state continues waivers, but does not continue a research group for impact evaluation purposes, all cases in the demonstration site will be treated as non-experimental treatment group cases regardless of their original assignment as control or experimental cases.

Instruction: Enter the one-digit code that indicates the family's waiver evaluation case status.

Blank=Not applicable (no waivers apply to this case)
1=Control group (for impact analysis purposes)
2=Experimental group
3=Non-experimental treatment group

44. *Is the TANF Family Exempt from the Federal Time Limit Provisions:*

Guidance: Under TANF rules, an eligible family that does not include an adult (or minor child head-of-household) recipient, who has received assistance for 60 countable months, may continue to receive assistance. A countable month is a month of assistance for which the adult (or minor child head-of-household) is not exempt from the Federal time limit provisions. TANF rules provide for two categories of exceptions. First, a family which does not include an adult (or minor child head-of-household) who has received 60 countable months of assistance may be exempt from the accrual of months of assistance (*i.e.*, clock not ticking). Second, a family with an adult (or minor child head-of-household), who has received 60 countable months of assistance may be exempt from termination of assistance. Exemptions from termination of assistance include a hardship exemption which allows up to 20% of the families to receive assistance beyond the 60 month time limit. In lieu of the 20% hardship exemptions, States may choose to employ extension policies prescribed under approved waivers.

Instruction: If the TANF family has no exemption from the Federal five-year time limit, enter code ''1.'' If the TANF family does not include an adult (or minor child head-of-household) who has received assistance for 60 countable months and is exempt from accrual of months of assistance under the Federal five-year time limit for the reporting month, enter ''2'', ''3'', or ''4'', whichever is appropriate. If the TANF family includes an adult (or minor child head-of-household) who has received assistance for 60 countable months and the family is exempt from termination of assistance, enter code ''5'', ''6'', ''7'' or ''8'', whichever is appropriate.

01=Family is not exempt from Federal time limit.

Family does not include an adult (or minor child head-of-household) who has received assistance for 60 countable months

02=Yes, family is exempt from accrual of months under the Federal five-year time limit for the reporting month because no adult or minor child head-of-household in eligible family receiving assistance.
03=Yes, family is exempt from accrual of months under the Federal five-year time limit for the reporting month because assistance to family is funded entirely from State-only funds.
04=Yes, family is exempt from accrual of months under the Federal five-year time limit for the reporting month because the family is living on an Indian country of at least 1,000 persons at least 50 percent of whose adults are unemployed.
05=Yes, family is exempt from accrual of months under the Federal five-year time limit for the reporting month based on an approved waiver policy.

Family includes an adult (or minor child head-of-household) who has received assistance for 60 countable month

06=Yes, family is exempt from termination of assistance under the Federal five-year time limit for the reporting month because assistance to family is funded entirely from State-only funds.
07=Yes, family is exempt from termination of assistance under the Federal five-year time limit for the reporting month due to a temporary good cause domestic violence waiver (and an inability to work).
08=Yes, family is exempt from termination of assistance under the Federal five-year time limit for the reporting month due to a hardship exemption for reason other than domestic violence.
09=Yes, family is exempt from termination of assistance under the Federal five-year time limit for the reporting month because the adult's (minor child head-of-household's) residence is on an Indian country of at least 1,000 persons at least 50 percent of whose adults are unemployed.
10=Yes, family (including adults) is exempt from termination of assistance under the Federal five-year time limit for the reporting month in accordance with extension policies prescribed under approved waivers.
11=Yes, the children in the family are receiving assistance beyond the 60 countable months and the family is exempt from termination of assistance under the Federal five-year time limit for the reporting month in accordance with extension policies prescribed under approved waivers (*i.e.*, adult-only time limit).

Person-Level Data

Person-level data has two sections: the adult and minor child head-of-household characteristic section and the child characteristics section. Section 419 of the Act defines adult and minor child. An adult is an individual that is not a minor child. A minor child is an individual who (a) has not attained 18 years of age or (b) has not attained 19 years of age and is a full-time student in a secondary school (or in the equivalent level of vocational or technical training.)

Adult and Minor Child Head-of-Household Characteristics

This section allows for coding up to six adults (or a minor child who is either a head-of-household or married to the head-of-household and up to five adults) in the TANF family. A minor child who is either a head-of-household or married to the head-of-household should be coded as an adult and will hereafter be referred to as a ''minor child head-of-household.'' For each adult (or minor child head-of-household) in the TANF family, complete the adult characteristics section. If a noncustodial parent is participating in work activities funded under the State (Tribal) TANF Program for the reporting month, the noncustodial parent must also be reported in this section as a member of the family receiving assistance.

If there are more than six adults (or a minor child head-of-household and five adults) in the TANF family, use the following order to identify the persons to be coded: (1) the head-of-household; (2) parents in the eligible family receiving assistance; (3) other adults in the eligible family receiving assistance; (4) Parents not in the eligible family receiving assistance; (5) caretaker relatives not in the eligible family receiving assistance; and (6) other persons, whose income or resources count in determining eligibility for or amount of assistance of the eligible family receiving assistance, in descending order the person with the most income to the person with least income.

45. *Family Affiliation:*

Guidance: This data element is used both for (1) the adult or minor child head-of-household section and (2) the minor child section. The same coding schemes are used in both sections. Some of these codes may not be applicable for adults.

Instruction: Enter the one-digit code that shows the adult's (or minor child head-of-household's) relation to the eligible family receiving assistance.

1=Member of the eligible family receiving assistance

Not in eligible family receiving assistance, but in the household

2=Parent of minor child in the eligible family receiving assistance
3=Caretaker relative of minor child in the eligible family receiving assistance
4=Minor sibling of child in the eligible family receiving assistance
5=Person whose income or resources are considered in determining eligibility for or amount of assistance for the eligible family receiving assistance

46. Noncustodial Parent Indicator:

Guidance: A noncustodial parent means a parent who does not live with his/her child(ren). A noncustodial parent, who lives in the State, may participate in work activities funded under the State TANF

Program. In order for the noncustodial parent to participate in work activities, (s)he must be a member of the eligible family receiving assistance and be reported as part of the TANF family.

Instruction: Enter the one-digit code that indicates the adult's (or minor child head-of-household's) noncustodial parent status.

1=Yes, a noncustodial parent
2=No

47. *Date of Birth:* Enter the eight-digit code for date of birth for the adult (or minor child head-of-household) under the State (Tribal) TANF Program in the format YYYYMMDD.

48. *Social Security Number:* Enter the nine-digit Social Security Number for the adult (or minor child head-of-household) in the format nnnnnnnnn.

49. *Race:* Enter the one-digit code for the race of the TANF adult (or minor child head-of-household).

1=White, not of Hispanic origin
2=Black, not of Hispanic origin
3=Hispanic
4=American Indian or Alaska Native
5=Asian or Pacific Islander
6=Other
9=Unknown

50. *Gender:* Enter the one-digit code that indicates the adult's (or minor child head-of-household's) gender.

1=Male
2=Female

Receives Disability Benefits

The Act specifies five types of disability benefits. For each type of disability benefits, enter the one-digit code that indicates whether or not the adult (or minor child head-of-household) received the benefit.

51. *Receives Federal Disability Insurance Benefits:* Enter the one-digit code that indicates the adult (or minor child head-of-household) received Federal disability insurance benefits for the reporting month.

1=Yes, received Federal disability insurance
2=No

52. *Receives Benefits Based on Federal Disability Status:* Enter the one-digit code that indicates the adult (or minor child head-of-household) received benefits based on Federal disability status for the reporting month.

1=Yes, received benefits based on Federal disability status
2=No

53. *Receives Aid Under Title XIV–APDT:* Enter the one-digit code that indicates the adult (or minor child head-of-household) received aid under a State plan approved under Title XIV for the reporting month.

1=Yes, received aid under Title XIV–APDT
2=No

54. *Receives Aid Under Title XVI–AABD:* Enter the one-digit code that indicates the adult (or minor child head-of-household) received aid under a State plan approved under Title XVI–AABD for the reporting month.

1=Yes, received aid under Title XVI–AABD
2=No

55. *Receives Aid Under Title XVI–SSI:* Enter the one-digit code that indicates the adult (or minor child head-of-household) received aid under a State plan approved under Title XVI–SSI for the reporting month.

1=Yes, received aid under Title XVI–SSI
2=No

56. *Marital Status:* Enter the one-digit code for the adult's (or minor child head-of-household's) marital status for the reporting month.

1=Single, never married
2=Married, living together
3=Married, but separated
4=Widowed
5=Divorced

57. *Relationship to Head-of-Household:*

Guidance: This data element is used both for (1) the adult or minor child head-of-household section and (2) the minor child section. The same coding schemes are used in both sections. Some of these codes may not be applicable for adults.

Instruction: Enter the two-digit code that shows the adult's relationship (including by marriage) to the head of the household, as defined by the Food Stamp Program or as determined by the State (Tribe), (*i.e.*, the relationship to the principal person of each person living in the household). If minor child head-of-household, enter code ''01.''

01=Head of household
02=Spouse
03=Parent
04=Daughter or son
05=Stepdaughter or stepson
06=Grandchild or great grandchild
07=Other related person (brother, niece, cousin)
08=Foster child
09=Unrelated child
10=Unrelated adult

58. *Teen Parent With Child In the Family:*

Guidance: A teen parent is a person who is under 20 years of age and that person's child is also a member of the TANF family.

Instruction: Enter the one-digit code that indicates the adult's (or minor child head-of-household's) teen parent status.

1=Yes, a teen parent
2=No

Educational Level

Educational level is divided into two parts: the highest level of education attained and the highest degree attained.

59. *Highest Level of Education Attained:* Enter the two-digit code to indicate the highest level of education attained by the adult (or minor child head-of-household).

00=No formal education
01–12=Grade level completed in primary/secondary school including secondary level vocational school or adult high school

60. *Highest Degree Attained:* If the adult (or minor child head-of-household) has a degree(s), enter the one-digit code that indicates the adult's (or minor child head-of-household's) highest degree attained. Otherwise, leave the field blank.

0=No degree
1=High school diploma, GED, or National External Diploma Program
2=Awarded Associate's Degree
3=Awarded Bachelor's Degree
4=Awarded graduate degree (Master's or higher)
5=Other credentials (degree, certificate, diploma, etc.)

61. *Citizenship/Alienage:*

Guidance: As described in TANF–ACF–PA–97–1, States have the flexibility to: (1) use State MOE funds to serve ''qualified'' aliens, including those who enter on or after August 22, 1996; (2) use Federal TANF funds to serve ''qualified'' aliens who arrived prior to the enactment of the PRWORA on August 22, 1996 [such aliens who arrived after enactment are barred from receiving Federal TANF funds for five years from the date of entry, except for certain aliens such as refugees and asylees]; (3) use State MOE funds to serve legal aliens who are not ''qualified''; and (4) use, under section 411(d) of PRWORA, State MOE funds to serve aliens who are not lawfully present in the U.S., but only through enactment of a State law, after the date of PRWORA enactment, which ''affirmatively provides'' for such benefits.

The citizenship/alienage is divided into four groups: individuals eligible (for the TANF Program based on citizenship/alienage), individuals eligible at State option, individuals not eligible, and status unknown.

Instruction: Enter the two-digit code that indicates the adult's (or minor child head-of-household's) citizenship/alienage.

Individuals Eligible for the TANF Program

01=U.S. citizen, including naturalized citizens
02=Permanent resident who has worked forty qualifying quarters; alien who is a veteran with an honorable discharge from the U.S. Armed Forces or is on active duty in the U.S. Armed Forces, or spouse or unmarried dependent children of such alien
03=Qualified alien accorded refugee, Cuban or Haitian entrant, or Amerasian immigrant status (INS Form I–94) who has resided in the U.S. five years or less
04=Qualified alien granted political asylum five or less years ago; qualified alien granted a withholding of deportation by INS (under sec. 243(h) or sec. 241(b)(3) of the INA) five or less years ago.

Individuals Eligible for the TANF Program at State Option

05=Qualified alien, (including immigrant accorded permanent resident status (''green card''), parolee granted parole for at least one year under sec. 212(d)(5) of the INA, and certain battered aliens and their children who are determined to be qualified), who arrived in the U.S. prior to enactment (August 22, 1996) or who arrived in the U.S. on or after enactment and has resided in the U.S. more than five years
06=Qualified alien accorded refugee, Cuban or Haitian entrant, or Amerasian immigrant status (INS Form I–94) who has resided in the U.S. more than five years
07=Qualified alien granted political asylum or granted withholding of deportation by INS (under sec. 243(h) or sec. 241(b)(3) of the INA) more than five years ago;

Individuals Not Eligible for the TANF Program

08=Qualified alien (other than a refugee, Cuban or Haitian entrant, Amerasian immigrant, asylee, or alien whose deportation has been withheld under sec. 243(h) or sec. 241(b)(3) of the INA) who arrived in the U.S. on or after enactment and has resided in the U.S. less than 5 years.

09=Any alien who is not a qualified alien.

Status Unknown

99=Unknown

62. *Number of Months Countable toward Federal Time Limit in Own State (Tribe):* Enter the number of months countable toward the adult's (or minor child head-of-household's) Federal five-year time limit based on assistance received from the State (Tribe).

63. *Number of Months Countable toward Federal Time Limit in Other States or Tribes:* Enter the number of months countable toward the adult's (or minor child head-of-household's) Federal five-year time limit based on assistance received from other States or Tribes.

64. *Number of Countable Months Remaining Under State's (Tribe's) Time Limit:* Enter the number of months that remain countable toward the adult's (or minor child head-of-household's) State (Tribal) time limit.

65. Is Current Month Exempt from the State's (Tribe's) Time Limit: Enter the one-digit code that indicates the adult's (or minor child head-of-household's) current exempt status from State's (Tribe's) time limit.

1=Yes, adult (or minor child head-of-household) is exempt from the State's (Tribe's) time limit for the reporting month

2=No

66. *Employment Status:* Enter the one-digit code that indicates the adult's (or minor child head-of-household's) employment status.

1=Employed

2=Unemployed, looking for work

3=Not in labor force (*i.e,* unemployed, not looking for work, includes discouraged workers)

67. *Work Participation Status:*

Guidance: Disregarded from the participation rate means the TANF family is not included in the calculation of the work participation rate.

Exempt means that the individual will not be penalized for failure to engage in work (*i.e.,* good cause exception); however, the TANF family is included in the calculation of the work participation rate.

Instruction: Enter the two-digit code that indicates the adult's (or minor child head-of-household's) work participation status.

01=Disregarded from participation rate, single custodial parent with child under 12 months

02=Disregarded from participation rate because all of the following apply: required to participate, but not participating, sanctioned for the reporting month, but not sanctioned for more than 3 months within the preceding 12-month period

03=Disregarded, family is part of an ongoing research evaluation (as a member of a control group or experimental treatment group) approved under Section 1115 of the Social Security Act

04=Disregarded from participation rate, is participating in a Tribal Work Program, and State has opted to exclude all Tribal Work Program participants from its work participation rate

05=Exempt, single custodial parent with child under age 6 and unavailability of child care

06=Exempt, disabled (not using an extended definition under a State waiver)

07=Exempt, caring for a severely disabled child (not using an extended definition under a State waiver)

08=A temporary good cause domestic violence waiver (not using an extended definition under a State waiver)

09=Exempt, State waiver

10=Exempt, other

11=Required to participate, but not participating, sanctioned for the reporting month and sanctioned for more than 3 months within the preceding 12-month period

12=Required to participate, but not participating, sanctioned for the reporting month but not sanctioned for more than 3 months within the preceding 12-month period

13=Required to participate, but not participating and not sanctioned for the reporting month

14=Deemed engaged in work, teen head-of-household who maintains satisfactory school attendance

15=Deemed engaged in work, single parent with child under age 6 and parent engaged in work activities for at least 20 hours per week

16=Required to participate, participating but not meeting minimum participation requirements

17=Required to participate, and meeting minimum participation requirements

99=Not applicable (*e.g.,* person living in household and whose income or resources are counted in determining eligibility for or amount of assistance of the family receiving assistance, but not in eligible family receiving assistance)

Adult Work Participation Activities

Guidance: To calculate the average number of hours per week of participation in a work activity, add the number of hours of participation across all weeks in the month and divide by the number of weeks in the month. Round to the nearest whole number.

Some weeks have days in more than one month. Include such a week in the calculation for the month that contains the most days of the week (*e.g.,* the week of July 27–August 2, 1997 would be included in the July calculation). Acceptable alternatives to this approach must account for all weeks in the fiscal year. One acceptable alternative is to include the week in the calculation for whichever month the Friday falls (*i.e.,* the JOBS approach.) A second acceptable alternative is to count each month as having 4.33 weeks.

During the first or last month of any spell of assistance, a family may happen to receive assistance for only part of the month. If a family receives assistance for only part of a month, the State (Tribe) may count it as a month of participation if an adult (or minor child head-of-household) in the family (both adults, if they are both required to work) is engaged in work for the minimum average number of hours for the full week(s) that the family receives assistance in that month.

Special Rules: Each adult (or minor child head-of-household) has a life-time limit for vocational educational training. Vocational educational training may only count as a work activity for a total of 12 months. For any adult (or minor child head-of-household) that has exceeded this limit, enter ''0'' as the average number of hours per week of participation in vocational education training, even if (s)he is engaged in vocational education training. The additional participation in vocational education training may be coded under ''Other.''

The exception to the above 12 month rule may be a State that received a waiver which is inconsistent with the provision limiting vocational education training. In this case the State would adhere to the terms and conditions of the waiver.

Limitations: The four limitations concerning job search and job readiness are: (1) Job search and job readiness assistance only count for 6 weeks in any fiscal year; (2) An individual's participation in job search and job readiness assistance counts for no more than 4 consecutive weeks; (3) If the State's (Tribe's) total unemployment rate for a fiscal year is at least 50 percent greater than the United States' total unemployment rate for that fiscal year or the State is a needy State (within the meaning of Section 403 (b)(6), then an individual's participation in job search or job readiness assistance counts for up to 12 weeks in that fiscal year; and (4) A State may count 3 or 4 days of job search and job readiness assistance during a week as a full week of participation, but only once for any individual.

For each week in which an adult (or minor child head-of-household) exceeds any of these limitations, use ''0'' as the number of hours in calculating the average number of hours per week of job search and job readiness, even if (s)he may be engaged in job search or job readiness activities.

If a State is operating its TANF Program under a waiver which permits broader rules for participation in job search and job readiness training, the TANF rules apply for coding this element and any additional participation in job search and job readiness training permitted under the waiver rules

should be coded under the item ''Additional Work Activities Permitted Under Waiver Demonstration.''

Instruction: For each work activity in which the adult (or minor child head-of-household) participated during the reporting month, enter the average number of hours per week of participation, except as noted above. For each work activity in which the adult (or minor child head-of-household) did not participate, enter zero as the average number of hours per week of participation.

68. *Unsubsidized Employment*

69. *Subsidized Private Sector Employment*

70. *Subsidized Public Sector Employment*

71. *Work Experience*

72. *On-the-job Training*

73. *Job Search and Job Readiness Assistance*

Instruction: Do not count hours of participation in job search and job readiness training beyond the TANF limit where allowed by waivers in this item. Instead count the hours of participation beyond the TANF limit in the item ''Additional Work Activities Permitted Under Waiver Demonstration.'' Otherwise, count the additional hours of work participation under the work activity ''Other Work Activities.''

74. *Community Service Programs*

75. *Vocational Educational Training*

Instruction: Do not count hours of participation in vocational educational training beyond the TANF 12 month life-time limit where allowed by waivers in this item. Instead count the hours of participation beyond the TANF limit in the item ''Additional Work Activities Permitted Under Waiver Demonstration.'' Otherwise, count the additional hours of work participation under the work activity ''Other Work Activities.''

76. *Job Skills Training Directly Related to Employment*

77. *Education Directly Related to Employment for Individuals with no High School Diploma or Certificate of High School Equivalency*

78. *Satisfactory School Attendance for Individuals with No High School Diploma or Certificate of High School Equivalency*

79. *Providing Child Care Services to an Individual Who Is Participating in a Community Service Program*

80. *Additional Work Activities Permitted Under Waiver Demonstration*

Instruction: Hours of participation in job search, job readiness training, or other work activities beyond the TANF limits as permitted by the State waiver should be counted in this item. Otherwise, count the additional hours of work participation in the work activity ''Other Work Activities.''

81. *Other Work Activities*

Guidance: Reporting on this data element is optional. States may want to demonstrate their additional efforts at helping individuals become self-sufficient even though these activities are not considered in the calculation of the work participation rates.

82. *Required Hours of Work Under Waiver Demonstration:*

Guidance: In approving waivers, ACF specified hours of participation in several instances. One type of hour change in the welfare reform demonstrations, was the recognition, as part of a change in work activities and/or exemptions, that the hours individuals worked should be consistent with their abilities and in compliance with an employability or personal responsibility plan or other criteria in accordance to waiver terms and conditions. As the hour requirement in this case was integral and necessary to achieve the waiver purpose of appropriately requiring work activities to move individuals to self-sufficiency, the State could show inconsistency and could use the waiver hours instead of the hours in section 407. A waiver that merely increased work hour requirements would not be deemed inconsistent.

Instruction: If applicable, enter the two-digit number that represents the average number of hours per week of work participation required of the individual as described in the demonstration terms or in an employability or personal responsibility plan. Otherwise, leave blank or enter ''0.''

Amount of Earned Income

Earned income has two categories. For each category of earned income, enter the dollar amount of the adult's (or minor child head-of-household's) earned income.

83. *Earned Income Tax Credit (EITC):*

Guidance: Earned Income Tax Credit is a refundable tax credit for families and dependent children. EITC payments are received either monthly (as advance payment through the employer), annually (as a refund from IRS), or both.

Instruction: Enter the total dollar amount of the earned income tax credit actually received, whether received as an advance payment or a single payment (e.g., tax refund), by the adult (minor child head-of-household) during the reporting month. If the State counts the EITC as a resource, report it here as earned income in the month received. If the State assumes an advance payment is applied for and obtained, only report what is actually received for this item.

84. *Wages, Salaries, and Other Earnings*

Amount of Unearned Income

Unearned income has four categories. For each category of unearned income, enter the dollar amount of the adult's (or minor child head-of-household's) unearned income.

85. *Social Security:* Enter the dollar amount of Social Security that the adult in the State (Tribal) TANF family has received for the reporting month.

86. *SSI:* Enter the dollar amount of SSI that the adult in the State (Tribal) TANF family has received for the reporting month.

87. *Worker's Compensation:* Enter the dollar amount of Worker's Compensation that the adult in the State (Tribal) TANF family has received for the reporting month.

88. *Other Unearned Income:*

Guidance: Other unearned income includes (but is not limited to) RSDI benefits, Veterans benefits, Unemployment Compensation, other government benefits, housing subsidy, contribution/income-in-kind, deemed income, Public Assistance or General Assistance, educational grants/scholarships/loans, other. Do not include Social Security, SSI, Worker's Compensation, value of Food Stamps assistance, the amount of the Child Care subsidy, and the amount of Child Support.

Instruction: Enter the dollar amount of other unearned income that the adult in the State TANF family has received for the reporting month.

Child Characteristics

This section allows for coding up to ten children in the TANF family. A minor child head-of-household should be coded as an adult, not as a child. The youngest child should be coded as the first child in the family, the second youngest child as the second child, and so on. If the needs of an unborn child are included in the amount of assistance provided to the family, code the unborn child as one of the children. Do this by entering the Date-of-Birth as ''99999999'' and leave the other Child Characteristics fields blank.

If there are more than ten children in the TANF family, use the following order to identify the persons to be coded: (1) children in the eligible family receiving assistance in order from youngest to oldest; (2) minor siblings of child in the eligible family receiving assistance from youngest to oldest; and (3) any other children.

89. *Family Affiliation:*

Guidance: This data element is used both for (1) the adult or minor child head-of-household section and (2) the minor child section. The same coding schemes are used in both sections. Some of these codes may not be applicable for children.

Instruction: Enter the one-digit code that shows the Child's relation to the eligible family receiving assistance.

1=Member of the eligible family receiving assistance

Not in eligible family receiving assistance, but in the household

2=Parent of minor child in the eligible family receiving assistance

3=Caretaker relative of minor child in the eligible family receiving assistance

4=Minor sibling of child in the eligible family receiving assistance

5=Person whose income or resources are considered in determining eligibility for or amount of assistance for the eligible family receiving assistance

90. *Date of Birth:* Enter the eight-digit code for date of birth for this child under the State (Tribal) TANF Program in the format YYYYMMDD.

91. *Social Security Number:* Enter the nine-digit Social Security Number for the child in the format nnnnnnnnn.

92. *Race:* Enter the one-digit code for the race of the TANF child.

1=White, not of Hispanic origin
2=Black, not of Hispanic origin
3=Hispanic
4=American Indian or Alaska Native
5=Asian or Pacific Islander
6=Other
9=Unknown

93. *Gender:* Enter the one-digit code that indicates the child's gender.

1=Male
2=Female

Receives Disability Benefits

The Act specifies five types of disability benefits. Two of these types of disability benefits are applicable to children. For each type of disability benefits, enter the one-digit code that indicates whether or not the child received the benefit.

94. *Receives Benefits Based on Federal Disability Status:* Enter the one-digit code that indicates the child received benefits based on Federal disability status for the reporting month.

1=Yes, received benefits based on Federal disability status
2=No

95. *Receives Aid Under Title XVI–SSI:* Enter the one-digit code that indicates the child received aid under a State plan approved under Title XVI–SSI for the reporting month.

1=Yes, received aid under Title XVI–SSI
2=No

96. *Relationship to Head-of-Household:*

Guidance: This data element is used both for (1) the adult or minor child head-of-household section and (2) the minor child section. The same coding schemes are used in both sections. Some of these codes may not be applicable for children.

Instruction: Enter the two-digit code that shows the child's relationship (including by marriage) to the head of the household, as defined by the Food Stamp Program or as determined by the State (Tribe), (*i.e.*, the relationship to the principal person of each person living in the household.)

01=Head-of-household
02=Spouse
03=Parent
04=Daughter or son
05=Stepdaughter or stepson
06=Grandchild or great grandchild
07=Other related person (brother, niece, cousin)
08=Foster child
09=Unrelated child
10=Unrelated adult

97. *Teen Parent With Child In the Family:*

Guidance: A teen parent is a person who is under 20 years of age and that person's child is also a member of the TANF family.

Instruction: Enter the one-digit code that indicates the child's teen parent status.

1=Yes, a teen parent
2=No

Educational Level

Educational level is divided into two parts: the highest level of education attained and the highest degree attained.

98. *Highest Level of Education Attained:* Enter the two-digit code to indicate the highest level of education attained by the child.

00=no formal education
01–12=Grade level completed in primary/secondary school including secondary level vocational school or adult high school

99. *Highest Degree Attained:*

Guidance: This data element is used both for (1) the adult or minor child head-of-household section and (2) the minor child section. The same coding schemes are used in both sections. Some of these codes may not be applicable for children.

Instruction: If the child has a degree(s), enter the one-digit code that indicates the child's highest degree attained. Otherwise, leave the field blank.

0=No degree
1=High school diploma, GED, or National External Diploma Program
2=Awarded Associate's Degree
3=Awarded Bachelor's Degree
4=Awarded graduate degree (Master's or higher)
5=Other credentials (degree, certificate, diploma, etc.)
9=Not applicable

100. *Citizenship/Alienage:* Enter the two-digit code that indicates the child's citizenship/alienage. The coding for this data element is the same as for item number 56, on page 439.

101. *Cooperation with Child Support:* Enter the one-digit code that indicates this child's parent has cooperated with child support for this child.

1=Yes, child's parent has cooperated with child support
2=No
3=Not applicable

Amount of Unearned Income

Unearned income has two categories. For each category of unearned income, enter the dollar amount of the child's unearned income.

102. *SSI:* Enter the dollar amount of SSI that the child in the State (Tribal) TANF family has received for the reporting month.

103. *Other Unearned Income:* Enter the dollar amount of other unearned income that the child in the State (Tribal) TANF family has received for the reporting month.

Child Care Reporting Section

Complete this section for each child in the TANF family for which a TANF child care subsidy is received (*i.e.*, funded under the State or Tribal TANF Program). If child care is provided by more than one provider, enter the child care data for the greatest number of hours on the Primary Care line, and the next highest number of child care hours on the Secondary Care line.

104. *Type of Child Care:*

Definition: Provider types are divided into two broad categories of licensed/regulated and legally operating (no license category available in State or locality). Under each of these categories are four types of providers: in-home, family home, group home, and centers. A relative provider is defined as one who is at least 18 years of age and who is a grandparent, great-grandparent, aunt or uncle, or sibling living outside the child's home.

Instruction: Enter the two-digit code indicating the type of care for each child. The following codes specify who cared for the child and where such care took place during the reporting month.

01=Licensed/regulated in-home child care
02=Licensed/regulated family child care
03=Licensed/regulated group home child care
04=Licensed/regulated center-based child care
05=Legally operating (no license category available in State or locality) in-home child care provided by a non-relative
06=Legally operating (no license category available in State or locality) in-home child care provided by a relative
07=Legally operating (no license category available in State or locality) family child care provided by a non-relative
08=Legally operating (no license category available in State or locality) family child care provided by a relative
09=Legally operating (no license category available in State or locality) group child care provided by a non-relative
10=Legally operating (no license category available in State or locality) group child care provided by a relative
11=Legally operating (no license category available in State or locality) center-based child care

A. *Primary*
B. *Secondary*

105. *Total Monthly Cost of Child Care:* For each child receiving child care, enter the total dollar amount (round to the nearest dollar) that the provider charges for the service. Include both the fee the family pays and the child care subsidy.

A. *Primary*
B. *Secondary*

106. *Total Monthly Hours of Child Care Provided During the Reporting Month:* Enter the three-digit number for the total monthly number of child care hours provided for the reporting month.

States (Tribes) may use their own formula to estimate the number of child care hours provided. If the State payment system is based on daily or part day rates, the calculated number of hours of service would be based on the number of full or part days given in each week (as defined by the State) multiplied by the number of hours for the full or part day. The calculated number should be reported as the actual number of hours provided.

Example:

Full day=8 hours
Part day=5 hours
Care given=3 full days and 2 part days
Average hours of care provided=(3*8+2*5)=34
A. *Primary*
B. *Secondary*

Appendix B—TANF Data Report—Section Two—Disaggregated Data Collection for Families No Longer Receiving Assistance Under the TANF Program

Instructions and Definitions

General Instruction: The State agency or Tribal grantee should collect and report data for each data element, unless explicitly instructed to leave the field blank.

1. *State FIPS Code:* Enter your two-digit State code from the following listing. These codes are the standard codes used by the National Institute of Standards and Technology. Tribal grantees should leave this field blank.

State	Code
Alabama	01
Alaska	02
American Samoa	60
Arizona	04
Arkansas	05
California	06
Colorado	08
Connecticut	09
Delaware	10
District of Columbia	11
Florida	12
Georgia	13
Guam	66
Hawaii	15
Idaho	16
Illinois	17
Indiana	18
Iowa	19
Kansas	20
Kentucky	21
Louisiana	22
Maine	23
Maryland	24
Massachusetts	25
Michigan	26
Minnesota	27
Mississippi	28
Missouri	29
Montana	30
Nebraska	31
Nevada	32
New Hampshire	33
New Jersey	34
New Mexico	35
New York	36
North Carolina	37
North Dakota	38
Ohio	39
Oklahoma	40
Oregon	41
Pennsylvania	42
Puerto Rico	72
Rhode Island	44
South Carolina	45
South Dakota	46
Tennessee	47
Texas	48
Utah	49
Vermont	50
Virgin Islands	78
Virginia	51
Washington	53
West Virginia	54
Wisconsin	55
Wyoming	56

2. *County FIPS Code:* Enter the three-digit code established by the National Institute of Standards and Technology for classification of counties and county equivalents. Codes were devised by listing counties alphabetically and assigning sequentially odd integers; *e.g.,* 001, 003, 005, * * *. A complete list of codes is available in Appendix F of the TANF Sampling and Statistical Methods Manual. Tribal grantees should leave this field blank.

3. *Tribal Code:* For Tribal grantees, enter the three-digit Tribal code that represents your Tribe (See Appendix E of the TANF Sampling and Statistical Methods Manual for a complete listing of Tribal Codes). State agencies should leave this field blank.

4. *Reporting Month:* Enter the four-digit year and two-digit month code that identifies the year and month for which the data are being reported.

5. *Stratum:*

Guidance: All families selected in the sample from the same stratum must be assigned the same stratum code. Valid stratum codes may range from ''00'' to ''99.'' States and Tribes with stratified samples should provide the ACF Regional Office with a listing of the numeric codes utilized to identify any stratification. If a State or Tribe uses a non-stratified sample design or opts to provide data for its entire caseload, enter the same stratum code any two-digit number) for each family.

Instruction: Enter the two-digit stratum code.

Family-Level Data

Definition: For reporting purposes, the TANF family means (a) all individuals receiving assistance as part of a family under the State's TANF Program; and (b) the following additional persons living in the household, if not included under (a) above:

(1) Parent(s) or caretaker relative(s) of any minor child receiving assistance;

(2) Minor siblings (including unborn children) of any child receiving assistance; and

(3) Any person whose income or resources would be counted in determining the family's eligibility for or amount of assistance.

6. *Case Number—TANF:*

Guidance: If the case number is less than the allowable eleven characters, a State may use lead zeros to fill in the number.

Instruction: Enter the number that was assigned by the State agency or Tribal grantee to uniquely identify the TANF family.

7. *ZIP Code:* Enter the five-digit ZIP code for the family's place of residence for the reporting month.

8. *Disposition:* Enter one of the following codes for each TANF family.

1=Data collection completed
2=Not subject to data collection/listed in error

9. *Reason for Closure:*

Guidance: A closed case is a family whose assistance was terminated for the reporting month, but received assistance under the State's TANF Program in the prior month. A temporally suspended case is not a closed case. If there is more than one applicable reason for closure, determine the principal (*i.e.,* most relevant) reason. If two or more reasons are equally relevant, use the reason with the lowest numeric code.

Instruction: Enter the one-digit code that indicates the reason for the TANF family no longer receiving assistance.

1=Employment
2=Marriage
3=Five-Year Time Limit
4=Sanction
5=State (Tribal) policy
6=Minor child absent from the home for a significant time period
7=Transfer to Separate State MOE Program
8=Other

10. *Number of Family Members:* Enter two digits that represent the number of members in the family, which received assistance under the State's (Tribe's) TANF Program.

11. *Receives Subsidized Housing:*

Guidance: Subsidized housing refers to housing for which money was paid by the Federal, State, or Local government or through a private social service agency to the family or to the owner of the housing to assist the family in paying rent. Two families sharing living expenses does not constitute subsidized housing.

Instruction: Enter the one-digit code that indicates whether or not the TANF family received subsidized housing for the reporting month.

1=Public housing
2=HUD rent subsidy
3=Other rent subsidy
4=No housing subsidy

12. *Receives Medical Assistance:* Enter ''1'' if, for the reporting month, any TANF family member is eligible to receive (*i.e.,* a certified recipient of) medical assistance under the State plan approved under Title XIX or ''2'' if no TANF family member is eligible to receive medical assistance under the State plan approved under Title XIX.

1=Yes, receives medical assistance
2=No

13. *Receives Food Stamps:* If the TANF family received Food Stamps for the sample month, enter the one-digit code indicating the type of Food Stamp assistance. Otherwise, enter ''4.''

1=Yes, Food Stamp coupon allotment
2=Yes, cash
3=Yes, wage subsidy
4=No

14. *Amount of Food Stamp Assistance:*

Guidance: For situations in which the Food Stamp household differs from the TANF family, code this element in a manner that most accurately reflects the resources available to the TANF family.

Instruction: Enter the TANF family's authorized dollar amount of Food Stamp assistance for the reporting month.

15. *Receives Subsidized Child Care:*

Guidance: For the purpose of coding this data element, subsidized child care funded under the Child Care and Development Fund with funds that were transferred from the State TANF Program should be coded as ''2.''

Instruction: If the TANF family receives subsidized child care for the reporting month, enter code ''1'', ''2'', ''3'', or ''4'', whichever is appropriate. Otherwise, enter code ''5.''

1=Yes, funded under the State (Tribal) TANF Program
2=Yes, funded under the Child Care and Development Fund
3=Yes, funded under another Federal program (*e.g.,* SSBG)
4=Yes, funded under a State, Tribal, or local program
5=No

16. *Amount of Subsidized Child Care:*

Guidance: Subsidized child care means a grant by the Federal, State or Local government to a parent (or care-taker relative) to support, in part or whole, the cost of child care services provided by an eligible provider to an eligible child. The grant may be paid directly to the parent (or care-taker relative) or to a child care provider on behalf of the parent (or care-taker relative).

Instruction: Enter the dollar amount of subsidized child care that the TANF family has received for services in the reporting month. If the TANF family did not receive any subsidized child care for the reporting month, enter ''00.''

Person-Level Data

Person-level data has two sections: the adult and minor child head-of-household characteristic section and the child characteristics section. Section 419 of the Act defines adult and minor child. An adult is an individual that is not a minor child. A minor child is an individual who (a) has not attained 18 years of age or (b) has not attained 19 years of age and is a full-time student in a secondary school (or in the equivalent level of vocational or technical training.)

Adult and Minor Child Head-of-Household Characteristics

This section allows for coding up to six adults (or a minor child head-of-household and up to five adults) in the TANF family. A minor child head-of-household should be coded as an adult. For each adult (or minor child head-of-household) in the TANF family, complete the adult characteristics section. If a noncustodial parent is participating in work activities funded under the State (Tribal) TANF Program for the reporting month, the noncustodial parent must also be reported in this section as a member of the family receiving assistance.

If there are more than six adults (or a minor child head-of-household and five adults) in the TANF family, use the following order to identify the persons to be coded: (1) the head-of-household; (2) parents in the eligible family receiving assistance; (3) other adults in the eligible family receiving assistance; (4) Parents not in the eligible family receiving assistance; (5) caretaker relatives not in the eligible family receiving assistance; and (6) other persons, whose income or resources count in determining eligibility for or amount of assistance of the eligible family receiving assistance, in descending order the person with the most income to the person with least income.

17. *Family Affiliation:*

Guidance: This data element is used both for (1) the adult or minor child head-of-household section and (2) the minor child section. The same coding schemes are used in both sections. Some of these codes may not be applicable for adults.

Instruction: Enter the one-digit code that shows the adult's relation to the eligible family receiving assistance.

1=Member of the eligible family receiving assistance

Not in eligible family receiving assistance, but in the household

2=Parent of minor child in the eligible family receiving assistance
3=Caretaker relative of minor child in the eligible family receiving assistance
4=Minor sibling of child in the eligible family receiving assistance
5=Person whose income or resources are considered in determining eligibility for or amount of assistance for the eligible family receiving assistance

18. *Date of Birth:* Enter the eight-digit code for date of birth for this adult (or minor child head-of-household) under TANF in the format YYYYMMDD.

19. *Social Security Number:* Enter the nine-digit Social Security Number for the adult (or minor child head-of-household) in the format nnnnnnnnn.

20. *Race:* Enter the one-digit code for the race of the TANF adult (or minor child head-of-household).

1=White, not of Hispanic origin
2=Black, not of Hispanic origin
3=Hispanic
4=American Indian or Alaska Native
5=Asian or Pacific Islander
6=Other
9=Unknown

21. *Gender:* Enter the one-digit code that indicates the adult's (or minor child head-of-household's) gender.

1=Male
2=Female

Receives Disability Benefits

The Act specifies five types of disability benefits.For each type of disability benefits, enter the one-digit code that indicates whether or not the adult (or minor child head-of-household) received the benefit.

22. *Receives Federal Disability Insurance Benefits:* Enter the one-digit code that indicates the adult (or minor child head-of-household) received Federal disability insurance benefits for the reporting month.

1=Yes, received Federal disability insurance
2=No

23. *Receives Benefits Based on Federal Disability Status:* Enter the one-digit code that indicates the adult (or minor child head-of-household) received benefits based on Federal disability status for the reporting month.

1=Yes, received benefits based on Federal disability status
2=No

24. *Receives Aid Under Title XIV–APDT:* Enter the one-digit code that indicates the adult (or minor child head-of-household) received aid under a State plan approved under Title XIV for the reporting month.

1=Yes, received aid under Title XIV-APDT
2=No

25. *Receives Aid Under Title XVI–AABD:* Enter the one-digit code that indicates the adult (or minor child head-of-household) received aid under a State plan approved under Title XVI-AABD for the reporting month.

1=Yes, received aid under Title XVI-AABD
2=No

26. *Receives Aid Under Title XVI-SSI:* Enter the one-digit code that indicates the adult (or minor child head-of-household) received aid under a State plan approved under Title XVI-SSI for the reporting month.

1=Yes, received aid under Title XVI-SSI
2=No

27. *Marital Status:* Enter the one-digit code for the marital status of the recipient.

1=Single, never married
2=Married, living together
3=Married, but separated
4=Widowed
5=Divorced

28. *Relationship to Head-of-Household:*

Guidance: This data element is used both for (1) the adult or minor child head-of-household section and (2) the minor child section. The same coding schemes are used in both sections. Some of these codes may not be applicable for adults.

Instruction: Enter the two-digit code that shows the adult's relationship (including by marriage) to the head of the household, as defined by the Food Stamp Program or as determined by the State (Tribe), (*i.e.,* the relationship to the principal person of each person living in the household.) If a minor child head-of-household, enter code ''01.''

01=Head of household
02=Spouse
03=Parent
04=Daughter or son
05=Stepdaughter or stepson
06=Grandchild or great grandchild
07=Other related person (brother, niece, cousin)
08=Foster child
09=Unrelated child
10=Unrelated adult

29. *Teen Parent With Child In the Family:*

Guidance: A teen parent is a person who is under 20 years of age and that person's child is also a member of the TANF family.

Instruction: Enter the one-digit code that indicates the adult's (or minor child head-of-household's) teen parent status.

1=Yes, a teen parent
2=No

Educational Level

Educational level is divided into two parts: the highest level of education attained and the highest degree attained.

30. *Highest Level of Education Attained:* Enter the two-digit code to indicate the highest level of education attained by the adult (or minor child head-of-household).

00=No formal education
01–12=Grade level completed in primary/secondary school including secondary level vocational school or adult high school

31. *Highest Degree Attained:* If the adult (or minor child head-of-household) has a degree(s), enter the one-digit code that indicates the adult's (or minor child head-of-household's) highest degree attained. Otherwise, leave the field blank.

0=No degree
1=High school diploma, GED, or National External Diploma Program
2=Awarded Associate's Degree
3=Awarded Bachelor's Degree
4=Awarded graduate degree (Master's or higher)
5=Other credentials (degree, certificate, diploma, etc.)

32. *Citizenship/Alienage:*

Guidance: As described in TANF-ACF-PA–97–1, States have the flexibility to: (1) use State MOE funds to serve ''qualified'' aliens, including those who enter on or after August 22, 1996; (2) use Federal TANF funds to serve ''qualified'' aliens who arrived prior to the enactment of the PRWORA on August 22, 1996 [such aliens who arrived after

enactment are barred from receiving Federal TANF funds for five years from the date of entry, except for certain aliens such as refugees and asylees]; (3) use State MOE funds to serve legal aliens who are not ''qualified''; and (4) use, under section 411(d) of PRWORA, State MOE funds to serve aliens who are not lawfully present in the U.S., but only through enactment of a State law, after the date of PRWORA enactment, which ''affirmatively provides'' for such benefits.

The citizenship/alienage is divided into four groups: individuals eligible (for the TANF Program based on citizenship/alienage), individuals eligible at State option, individuals not eligible, and status unknown.

Instruction: Enter the two-digit code that indicates the adult's (or minor child head-of-household's) citizenship/alienage.

Individuals Eligible for the TANF Program

01=U.S. citizen, including naturalized citizens
02=Permanent resident who has worked forty qualifying quarters; alien who is a veteran with an honorable discharge from the U.S. Armed Forces or is on active duty in the U.S. Armed Forces, or spouse or unmarried dependent children of such alien
03=Qualified alien accorded refugee, Cuban or Haitian entrant, or Amerasian immigrant status (INS Form I–94) who has resided in the U.S. five years or less
04=Qualified alien granted political asylum five or less years ago; qualified alien granted a withholding of deportation by INS (under sec. 243(h) or sec. 241(b)(3) of the INA) five or less years ago.

Individuals Eligible for the TANF Program at State Option

05=Qualified alien, (including immigrant accorded permanent resident status (''green card''), parolee granted parole for at least one year under sec. 212(d)(5) of the INA, and certain battered aliens and their children who are determined to be qualified), who arrived in the U.S. prior to enactment (August 22, 1996) or who arrived in the U.S. on or after enactment and has resided in the U.S. more than five years
06=Qualified alien accorded refugee, Cuban or Haitian entrant, or Amerasian immigrant status (INS Form I–94) who has resided in the U.S. more than five years
07=Qualified alien granted political asylum or granted withholding of deportation by INS (under sec. 243(h) or sec. 241(b)(3) of the INA) more than five years ago;

Individuals Not Eligible for the TANF Program

08=Qualified alien (other than a refugee, Cuban or Haitian entrant, Amerasian immigrant, asylee, or alien whose deportation has been withheld under sec. 243(h) or sec. 241(b)(3) of the INA) who arrived in the U.S. on or after enactment and has resided in the U.S. less than 5 years.
09=Any alien who is not a qualified alien.

Status Unknown

99=Unknown

33. *Number of Months Countable toward Federal Time Limit in Own State (Tribe):* Enter the number of months countable toward the adult's (or minor child head-of-household's) Federal five-year time limit based on assistance received from the State (Tribe).

34. *Number of Months Countable toward Federal Time Limit in Other States or Tribes:* Enter the number of months countable toward the adult's (or minor child head-of-household's) Federal five-year time limit based on assistance received from other States or Tribes.

35. *Number of Countable Months Remaining Under State's (Tribe's) Time Limit:* Enter the number of months that remain countable toward the adult's (or minor child head-of-household's) State (Tribal) time limit.

36. *Employment Status:* Enter the one-digit code that indicates the adult's (or minor child head-of-household's) employment status.

1=Employed
2=Unemployed, looking for work
3=Not in labor force (*i.e,* unemployed, not looking for work, includes discouraged workers)

Amount of Earned Income

For each category of earned income, enter the amount of the adult's (or minor child head-of-household's) earned income.

37. *Earned Income Tax Credit (EITC):*

Guidance: Earned Income Tax Credit is a refundable tax credit for families and dependent children. EITC payments are received either monthly (as advance payment through the employer), annually (as a refund from IRS), or both.

Instruction: Enter the total dollar amount of the earned income tax credit actually received, whether received as an advance payment or a single payment (*e.g.,* tax refund), by the adult (minor child head-of-household) during the reporting month. If the State counts the EITC as a resource, report it here as earned income in the month received. If the State assumes an advance payment is applied for and obtained, only report what is actually received for this item.

38. *Wages, Salaries, and Other Earnings:*

Amount of Unearned Income

39. *Unearned Income:* Enter the amount of the adult's (or minor child head-of-household's) unearned income.

Child Characteristics

This section allows for coding up to ten children in the TANF family. A minor child head-of-household should be coded as an adult, not as a child. The youngest child should be coded as the first child in the family, the second youngest child as the second child, and so on. If the needs of an unborn child are included in the amount of assistance provided to the family, code the unborn child as one of the children. Do this by entering the Date-of-Birth as ''99999999'' and leave the other Child Characteristics fields blank.

If there are more than ten children in the TANF family, use the following order to identify the persons to be coded: (1) children in the eligible family receiving assistance in order from youngest to oldest; (2) minor siblings of child in the eligible family receiving assistance from youngest to oldest; and (3) any other children.

40. *Family Affiliation:*

Guidance: This data element is used both for (1) the adult or minor child head-of-household section and (2) the minor child section. The same coding schemes are used in both sections. Some of these codes may not be applicable for children.

Instruction: Enter the one-digit code that shows the Child's relation to the eligible family receiving assistance.

1=Member of the eligible family receiving assistance

Not in eligible family receiving assistance, but in the household

2=Parent of minor child in the eligible family receiving assistance
3=Caretaker relative of minor child in the eligible family receiving assistance
4=Minor sibling of child in the eligible family receiving assistance
5=Person whose income or resources are considered in determining eligibility for or amount of assistance for the eligible family receiving assistance

41. *Date of Birth:* Enter the eight-digit code for date of birth for this child under TANF in the format YYYYMMDD.

42. *Social Security Number:* Enter the nine-digit Social Security Number for the child in the format nnnnnnnnn.

43. *Race:* Enter the one-digit code for the race of the TANF child.

1=White, not of Hispanic origin
2=Black, not of Hispanic origin
3=Hispanic
4=American Indian or Alaska Native
5=Asian or Pacific Islander
6=Other
9=Unknown

44. *Gender:* Enter the one-digit code that indicates the child's gender.

1=Male
2=Female

Receives Disability Benefits

The Act specifies five types of disability benefits. Two of these types of disability benefits are applicable to children. For each type of disability benefits, enter the one-digit code that indicates whether or not the child received the benefit.

45. *Receives Benefits Based on Federal Disability Status:* Enter the one-digit code that indicates the child received benefits based on Federal disability status for the reporting month.

1=Yes, received benefits based on Federal disability status
2=No

46. *Receives Aid Under Title XVI–SSI:* Enter the one-digit code that indicates the child received aid under a State plan approved under Title XVI–SSI for the reporting month.

1=Yes, received aid under Title XVI–SSI
2=No

47. *Relationship to Head-of-Household:*

Guidance: This data element is used both for (1) the adult or minor child head-of-

household section and (2) the minor child section. The same coding schemes are used in both sections. Some of these codes may not be applicable for children.

Instruction: Enter the two-digit code that shows the child's relationship (including by marriage) to the head of the household, as defined by the Food Stamp Program or as determined by the State (Tribe), (*i.e.,* the relationship to the principal person of each person living in the household.)

01=Head of household
02=Spouse
03=Parent
04=Daughter or son
05=Stepdaughter or stepson
06=Grandchild or great grandchild
07=Other related person (brother, niece, cousin)
08=Foster child
09=Unrelated child
10=Unrelated adult

48. *Teen Parent With Child In the Family:*

Guidance: A teen parent is a person who is under 20 years of age and that person's child is also a member of the TANF family.

Instruction: Enter the one-digit code that indicates the child's teen parent status.

1=Yes, a teen parent
2=No

Educational Level

Educational level is divided into two parts: the highest level of education attained and the highest degree attained.

49. *Highest Level of Education Attained:* Enter the two-digit code to indicate the highest level of education attained by the child.

00=No formal education
01–12=Grade level completed in primary/secondary school including secondary level vocational school or adult high school

50. *Highest Degree Attained:*

Guidance: This data element is used both for (1) the adult or minor child head-of-household section and (2) the minor child section. The same coding schemes are used in both sections. Some of these codes may not be applicable for children.

Instruction: If the child has a degree(s), enter the one-digit code that indicates the child's highest degree attained. Otherwise, leave the field blank.

0=No degree
1=High school diploma, GED, or National External Diploma Program
2=Awarded Associate's Degree
3=Awarded Bachelor's Degree
4=Awarded graduate degree (Master's or higher)
5=Other credentials (degree, certificate, diploma, etc.)
9=Not applicable

51. *Citizenship/Alienage:* Enter the two-digit code that indicates the child's citizenship/alienage. The coding for this data element is the same as for item number 27, on page 486.

52. *Cooperation with Child Support:* Enter the one-digit code that indicates whether this child's parent has cooperated with child support for this child.

1=Yes, child's parent has cooperated with child support
2=No, child's parent has not cooperated with child support
3=Not applicable

53. *Unearned Income:* Enter the dollar amount of the child's unearned income.

Appendix C—TANF Data Report—Section Three—Aggregated Data Collection for Families Applying for, Receiving, and No Longer Receiving Assistance Under the TANF Program

Instructions and Definitions

1. *State FIPS Code:* Enter your two-digit State code. Tribal grantees should leave this field blank.

2. *Tribal Code:* For Tribal grantees only, enter the three-digit Tribal code that represents your Tribe (See Appendix E of the TANF Sampling and Statistical Methods Manual for a complete listing of Tribal Codes). State agencies should leave this field blank.

3. *Calendar Quarter:* The four calendar quarters are as follows:

First quarter	January–March.
Second quarter	April–June.
Third quarter	July–September.
Fourth quarter	October–December.

Enter the four-digit year and one-digit quarter code (in the format YYYYQ) that identifies the calendar year and quarter for which the data are being reported (*e.g.,* first quarter of 1997 is entered as ''19971'').

Applications

Guidance: The term ''application'' means the action by which an individual indicates in writing to the agency administering the State (or Tribal) TANF Program his/her desire to receive assistance.

Instruction: All counts of applications should be unduplicated monthly totals.

4. *Total Number of Applications:* Enter the total number of approved and denied applications received for each month of the quarter. For each month in the quarter, the total in this item should equal the sum of the number of approved applications (in item #5) and the number of denied applications (in item #6).

A. *First Month:*
B. *Second Month:*
C. *Third Month:*

5. *Total Number of Approved Applications:* Enter the number of applications approved during each month of the quarter.

A. *First Month:*
B. *Second Month:*
C. *Third Month:*

6. *Total Number of Denied Applications:* Enter the number of applications denied (or otherwise disposed of) during each month of the quarter.

A. *First Month:*
B. *Second Month:*
C. *Third Month:*

Active Cases

For purposes of completing this report, include all TANF eligible cases receiving assistance (*i.e.,* cases funded under the TANF block grant and State MOE funded TANF cases) as cases receiving assistance under the State (Tribal) TANF Program. All counts of families and recipients should be unduplicated monthly totals.

7. *Total Amount of Assistance:* Enter the dollar value of all assistance (cash and non-cash) provided to TANF families under the State (Tribal) TANF Program for each month of the quarter. Round the amount of assistance to the nearest dollar.

A. *First Month:*
B. *Second Month:*
C. *Third Month:*

8. *Total Number of Families:* Enter the number of families receiving assistance under the State (Tribal) TANF Program for each month of the quarter. The total in this item should equal the sum of the number of two-parent families (in item #9), the number of one-parent families (in item ι10) and the number of no-parent families (in item #11).

A. *First Month:*
B. *Second Month:*
C. *Third Month:*

9. *Total Number of Two-parent Families:* Enter the total number of 2-parent families receiving assistance under the State (Tribal) TANF Program for each month of the quarter.

A. *First Month:*
B. *Second Month:*
C. *Third Month:*

10. *Total Number of One-Parent Families:* Enter the total number of one-parent families receiving assistance under the State (Tribal) TANF Program for each month of the quarter.

A. *First Month:*
B. *Second Month:*
C. *Third Month:*

11. *Total Number of No-Parent Families:* Enter the total number of no-parent families receiving assistance under the State (Tribal) TANF Program for each month of the quarter.

A. *First Month:*
B. *Second Month:*
C. *Third Month:*

12. *Total Number of Recipients:* Enter the total number of recipients receiving assistance under the State (Tribal) TANF Program for each month of the quarter. The total in this item should equal the sum of the number of adult recipients (in item #13) and the number of child recipients (in item #14).

A. *First Month:*
B. *Second Month:*
C. *Third Month:*

13. *Total Number of Adult Recipients:* Enter the total number of adult recipients receiving assistance under the State (Tribal) TANF Program for each month of the quarter.

A. *First Month:*
B. *Second Month:*
C. *Third Month:*

14. *Total Number of Child Recipients:* Enter the total number of child recipients receiving assistance under the State (Tribal) TANF Program for each month of the quarter.

A. *First Month:*
B. *Second Month:*
C. *Third Month:*

15. *Total Number of Non-Custodial Parents Participating in Work Activities:* Enter the total number of non-custodial parents participating in work activities under the State (Tribal) TANF Program for each month of the quarter.

A. *First Month:*
B. *Second Month:*
C. *Third Month:*

16. *Total Number of Minor Child Heads-of-Household:* Enter the total number of minor child head-of-household families receiving assistance under the State (Tribal) TANF Program for each month of the quarter.

A. *First Month:*
B. *Second Month:*
C. *Third Month:*

17. *Total Number of Births:* Enter the total number of births for families receiving assistance under the State (Tribal) TANF Program for each month of the quarter.

A. *First Month:*
B. *Second Month:*
C. *Third Month:*

18. *Total Number of Out-of-Wedlock Births:* Enter the total number of out-of-wedlock births for families receiving assistance under the State (Tribal) TANF Program for each month of the quarter.

A. *First Month:*
B. *Second Month:*
C. *Third Month:*

Closed Cases

19. *Total Number of Closed Cases:* Enter the total number of closed cases for each month of the quarter.

A. *First Month:*
B. *Second Month:*
C. *Third Month:*

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BILLING CODE 4184-01-C

APPENDIX D

Department of Health and Human Services
Administration for Children and Families

Temporary Assistance for Needy Families (TANF) ACF - 196 Financial Report

STATE	FISCAL YEAR	CURRENT QTR. ENDED	NEXT QTR. ENDING	ANNUAL RECONCILIATION [ ] YES [ ] NO
		SFAG FUNDS		CONTINGENCY FUND
				FEDERAL SHARE AT FY 1995 FMAP RATE OF _____%
ITEMS	(A) FEDERAL AWARDS & TRANSFERS	(B)	(C)	(D) FEDERAL AWARDS
1. AWARDED	$			$
2. TRANSFERRED TO CCDF DISCRETIONARY	$			
3. TRANSFERRED TO SSBG	$			
4. AVAILABLE FOR TANF	$			

	FEDERAL TANF EXPENDITURES	STATE TANF EXPENDITURES (MOE)	SEPARATE STATE PROGRAMS (MOE)	FEDERAL EXPENDITURES
5. EXPENDITURES ON ASSISTANCE				
a. CASH ASSISTANCE	$	$	$	$
b. WORK SUBSIDIES	$	$	$	$
c. CHILD CARE	$	$	$	$
d. OTHER	$	$	$	$
6. EXPENDITURES ON NON-ASSISTANCE				
a. WORK ACTIVITIES	$	$	$	$
b. ADMINISTRATION	$	$	$	$
c. SYSTEMS	$	$	$	$
d. TRANSITIONAL SERVICES FOR EMPLOYED	$	$	$	$
e. OTHER	$	$	$	$
7. OTHER EXPENDITURES	$	$	$	$
8. TOTAL EXPENDITURES	$	$	$	$

9. FEDERAL UNLIQUIDATED OBLIGATIONS	$		$
10. UNOBLIGATED BALANCE	$		$

QUARTERLY ESTIMATE

	TANF FEDERAL FUNDS		
11. ESTIMATE FOR NEXT QTR. ENDED	$		

THIS IS TO CERTIFY THAT THE INFORMATION REPORTED ON ALL PARTS OF THIS FORM IS ACCURATE AND TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF.	
SIGNATURE: AUTHORIZED STATE OFFICIAL	TYPED NAME, TITLE, AGENCY NAME
DATE SUBMITTED: SUBMITTAL: [ ] NEW [ ] REVISED	
PAGE 1 OF 1 APPROVED OMB NO. xxxx-xxxx FORM ACF-196 (xx/xx)	

Appendix D—Section 2—Instruction for Completion of Form ACF–196

Financial Reporting Form for the Temporary Assistance for Needy Families (TANF) Program

All States must complete and submit this report in accordance with these instructions on behalf of the State agency administering the TANF Program.

Due Dates: This form must be submitted quarterly by February 14, May 15, August 14 and November 14.

States must submit quarterly reports for each fiscal year until all Federal TANF funds are expended. A State may be submitting reports simultaneously to cover two or more fiscal years.

Distribution: The original copy (with original signatures) should be submitted to: Administration for Children and Families, Office of Program Support, Division of Formula, Entitlement and Block Grants, Aerospace Building, 7th Floor, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447. An additional copy should be submitted to the ACF Regional Administrator.

General Instructions

—Round all entries to the nearest dollar. Omit cents.

—Enter State name.

—Enter the Fiscal Year for which this report is being submitted. Funding for each fiscal year is available until expended. Therefore, for each fiscal year, a State may be submitting reports simultaneously to cover two or more fiscal years. It is important to indicate the year for which information is being reported.

—Enter the ending dates for the current quarter (the quarter just ended for which this constitutes the report of actual expenditures and obligations) and the ending date of the next quarter (the upcoming quarter for which estimates are being requested on line 11).

Example: The State is reporting for the 1st quarter of the Federal fiscal year (10/1 through 12/31), the report is due February 14, the current quarter ending date is 12/31, the next quarter ending date for which estimates are requested is 6/30. The estimate submitted by the State will be for the quarter of 4/1 through 6/30. Estimates are not required on quarterly reports submitted for prior fiscal years.

—Enter whether this report is being used for annual reconciliation of the Contingency Fund.

—Enter the Federal Medical Assistance Percentage Rate used by the State for the fiscal year for which Contingency Funds were received.

—Indicate whether this is a new report or a revision of a report previously submitted for the same period.

—Entries are not required or are not applicable to blocks that are shaded.

Columns: All amounts reported in columns (A) through (D) must be actual expenditures or obligations made in accordance with all applicable statutes and regulations. Amounts reported in the estimates section are Federal estimates of expenditures to be made during the quarter indicated based on the best information available to the State.

Explanation of Columns

Column (A) lines 1 through 4 refer to the Federal State Family Assistance Grant (SFAG) awards, amounts transferred to the Child Care and Development Fund (CCDF) (Discretionary Fund) and the Social Services Block Grant (SSBG) program, and the amount available for TANF.

Column (A) lines 5 through 10 refer to the Federal SFAG funds the State expended and obligated under its TANF program.

Column (A) line 11 is the SFAG grant award amount or percentage the State estimates it will need for the next quarter ending referenced at the top of the form. (See page 6 of Line Item Instructions)

Column (B) lines 5 through 8 refer to State TANF expenditures the State is making to meet its TANF Maintenance of Effort (MOE) requirement. Includes State funds that are commingled with Federal funds; or State funds expended on the State program funded under TANF.

Note: States receiving Contingency Funds under section 403(b) for the fiscal year must also use this same column to report State TANF expenditures made to meet the Contingency Fund (CF) MOE requirement and matching expenditures made above the 100 percent MOE requirement. Expenditures made to meet the CF MOE requirement and expenditures made above the MOE level (for matching purposes) must be expenditures made under the State TANF program only; they cannot include expenditures made under ''separate State programs.'' In addition, child care expenditures cannot be included as MOE expenditures or expenditures that are matched with Contingency Funds.

Column (C) lines 5 through 8 refer to State expenditures the State is making in Separate State Programs outside the State TANF program to meet its TANF MOE requirement.

Note: For the TANF MOE requirement, the cumulative total expenditures (Sum of 8(B)+8(C)) reported at the end of the Federal fiscal year should add up to 75% of fiscal year 1994 historic State expenditures if the State met the TANF participation requirements, or 80% of fiscal year 1994 historic State expenditures if the State did not meet the TANF participation requirements. TANF MOE requirements and tables were published in Program Instruction No. TANF–ACF–PI–96–2, dated December 6, 1996.

For States that received Contingency Funds, line 8(B) minus line 5c(B) (child care) must exceed 100 percent of the CF MOE requirement.

Note: The State must submit an addendum attached to the fourth quarter report for each fiscal year that provides ''separate State program'' information as required under parts 273 and 274 of the proposed rules.

Column (D) line 1 refers to the Federal Contingency Fund grant awards.

Column (D) lines 5 through 10 refer to the Federal share of expenditures for which Federal funding is available at the FMAP rate for the fiscal year for which Contingency Funds were received. Contingency Funds are available for match for State expenditures in excess of 100% of CF MOE requirements as explained in the ''Note'' above.

Example: The State received Contingency Funds of $100,000 for 6 months of the fiscal year; the FMAP rate is 60% Federal and 40% State; the CF 100% MOE requirement is $1,000,000; the State reported expenditures under Columns (B) and (D) of $1,200,000. To determine how much of the Contingency Funds the State can keep, the expenditures of $1,000,000 (CF MOE requirement) must be subtracted from the total expenditures of $1,200,000. That difference ($200,000) is to be multiplied by 60 percent, *i.e.*, $200,000×60%=$120,000. The $120,000 must then be multiplied by 1/12 times the number of months a State received Contingency Funds, *i.e.*, $120,000×1/12×6=$60,000. The State may keep only $60,000 of the $100,000 ACF awarded it for the Contingency Fund.

Determining how much, if any, a State can keep of the Contingency Funds awarded to it for a fiscal year, is known only after annual reconciliation of the Contingency Fund account is completed. This form will serve as the annual reconciliation report when submitted for the fourth quarter of the fiscal year. Based on the example above, line 8 of Column (D) (Total Expenditures-Contingency Fund) must equal $60,000.

It is possible that a State will have received Contingency Funds after the end of the fiscal year that apply to expenditures made in the prior fiscal year. For a State receiving Contingency Funds for a fiscal year after it has ended, the State will be required to submit a revised fourth quarter report within 45 days of receipt of the additional Contingency Funds. There is no carryover from one fiscal year to the next.

State Replacement of Grant Reductions Resulting From Penalties

If a State's State Family Assistance Grant is reduced because of the imposition of a penalty under section 409, section 409(a)(12) provides that the State must maintain a level of spending at the SFAG amount. In place of SFAG funds withheld for a penalty, the State must substitute with its own funds an amount that is no less than the amount withheld. The State replacement funds must be included in Column (B).

Line Item Instructions—Cumulative Fiscal Year Expenditures and Obligations

Line 1. Awarded. Enter in column (A) the cumulative total of State Family Assistance Grant (SFAG) funds awarded to the State from October 1 of the Federal fiscal year for which the report is being submitted through the current quarter being reported. Enter in column (D) the cumulative total of Contingency Funds awarded to the State from October 1 of the Federal fiscal year for which the report is being submitted through the current quarter being reported.

Line 2. Transferred to Child Care and Development Fund (CCDF). Enter in column (A) the cumulative total of funds the State transferred to the Discretionary Fund of the Child Care and Development Fund from October 1 of the Federal fiscal year for which the report is being submitted through the current quarter being reported. Section

404(d)(1) of the Act governs the transfer of SFAG funds to the Discretionary Fund. In compliance with section 404(d)(1), a State may not transfer more than 30% of its total annual SFAG grant. A State may transfer this entire amount to the Discretionary Fund of the CCDF program. All funds transferred to the Discretionary Fund of the CCDF program take on the rules and regulations of that recipient Fund.

Line 3. Transferred to SSBG. Enter in column (A) the cumulative total of funds the State transferred to the Social Services Block Grant (SSBG) program from October 1 of the Federal fiscal year for which the report is being submitted through the current quarter being reported. Section 404(d)(2) of the Act governs the transfer of SFAG funds to the SSBG program; it limits the amount a State may transfer to no more than 10% of its total annual SFAG to SSBG. (Also, the combined amount transferred to SSBG and the Discretionary Fund may not exceed 30% of the annual SFAG. In other words, for all financial reports applicable to grant funds for one fiscal year, the sum of the total cumulative amount reported on line 3 and the total cumulative amount reported on line 2 cannot exceed 30% of the annual SFAG.) All funds transferred to the SSBG program are subject to the statute and regulations of the recipient SSBG program.

Line 4. Available for TANF. Enter in column (A) the cumulative total of funds available for TANF after subtracting the amounts transferred to the CCDF program (Discretionary Fund) (line 2(A)) and/or the SSBG program (line 3(A)) from October 1 of the Federal fiscal year for which the report is being submitted through the current quarter being reported.

Line 5. Expenditures on Assistance. Blocks are shaded. Expenditures in this category must be included in Lines 5a. through 5d.

Line 5a. Cash Assistance. Enter in columns (A), (B), (C) and (D) the cumulative total expenditures for cash assistance from October 1 of the Federal fiscal year for which the report is being submitted through the current quarter being reported.

Line 5b. Work Subsidies. Enter in columns (A), (B), (C) and (D) the cumulative total expenditures for work subsidies from October 1 of the Federal fiscal year for which the report is being submitted through the current quarter being reported.

Line 5c. Child Care. Enter in columns (A), (B), (C) and (D) the cumulative total expenditures for child care from October 1 of the Federal fiscal year for which the report is being submitted through the current quarter being reported. The amounts reported in this category do not include funds transferred to the CCDF (Discretionary Fund) or SSBG programs.

Line 5d. Other. Enter in columns (A), (B), (C) and (D) the cumulative total expenditures for other expenditures considered ''expenditures on assistance'' that were not included on Lines 5a–5c from October 1 of the Federal fiscal year for which the report is being submitted through the current quarter being reported.

Note: The State must submit as an addendum attached to the fourth quarter report for each fiscal year which identifies the activities for which the ''other expenditures'' under this line item applies.

Line 6. Expenditures on Non-Assistance. Blocks are shaded. Expenditures in this category must be included in Lines 6a through 6e.

Line 6a. Work Activities. Enter in columns (A), (B), (C) and (D) the cumulative total expenditures for work activities from October 1 of the Federal fiscal year for which the report is being submitted through the current quarter being reported.

Note: The State must submit as an addendum attached to the fourth quarter report for each fiscal year (or more frequently, if there are changes) the State's definition of each work activity.

Line 6b. Administration. Enter in columns (A), (B), (C) and (D) the cumulative total expenditures for administrative costs from October 1 of the Federal fiscal year for which the report is being submitted through the current quarter being reported.

For State Family Assistance Grants (SFAG), the 15% administrative cost cap applies to the amount Available for TANF reported on line 4(A) of this form. For the Contingency Fund, the 15% administrative cost cap applies to the amount of total Federal expenditures reported on line 8(D). For State expenditures reported in columns (B) and (C), the 15% administrative cost cap applies to the amount of Total Expenditures (line 8) reported for each of these columns.

Line 6c. Systems. Enter in columns (A), (B), (C) and (D) the cumulative total expenditures for systems costs from October 1 of the Federal fiscal year for which the report is being submitted through the current quarter being reported.

Note: Section 404(b)(1) of the Act limits States to which a grant is made under section 403 to expend no more than 15% of the grant for administrative costs. In addition, section 404(b)(2) of the Act states that the 15% administrative cost cap shall not apply to the use of a grant for information technology and computerization needed for tracking or monitoring required by or under this part.

Line 6d. Transitional Services for Employed. Enter in columns (A), (B), (C) and (D) the cumulative total expenditures to provide transitional services to families that cease to receive assistance under the TANF program because of employment from October 1 of the Federal fiscal year for which the report is being submitted through the current quarter being reported.

Note: The State must submit as an addendum attached to the fourth quarter report for each fiscal year which describes the types of services the State provided under this line item.

Line 6e. Other. Enter in columns (A), (B), (C) and (D) the cumulative total expenditures for other expenditures considered ''expenditures on non-assistance'' that were not included on Lines 6a–6d. from October 1 of the Federal fiscal year for which the report is being submitted through the current quarter being reported.

Note: The State must submit as an addendum attached to the fourth quarter report for each fiscal year which identifies the activities for which the ''other expenditures'' under this line item applies.

Line 7. Other Expenditures. Enter in columns (A), (B), (C) and (D) the cumulative total other expenditures from October 1 of the Federal fiscal year for which the report is being submitted through the current quarter being reported. ''Other expenditures'' are those expenditures that cannot be reported under any other category on this form.

Note: The State must submit as an addendum attached to the fourth quarter report for each fiscal year which identifies the activities for which the ''other expenditures'' under this line item applies.

Line 8. Total Expenditures. Enter in columns (A), (B), (C) and (D) the cumulative total expenditures (Sum of Line 5a through Line 7) from October 1 of the Federal fiscal year for which the report is being submitted through the current quarter being reported.

Line 9. Federal Unliquidated Obligations. Enter in columns (A) and (D) the cumulative total Federal unliquidated obligations from October 1 of the Federal fiscal year for which the report is being submitted through the current quarter being reported.

For the Contingency Fund, this line should indicate $0 for the report submitted for the fourth quarter.

Line 10. Unobligated Balance. Enter in columns (A) and (D) the cumulative total Federal unobligated balances from October 1 of the Federal fiscal year for which the report is being submitted through the current quarter being reported. After the end of the Federal fiscal year any amount reported in column (D) as an unobligated balance will be de-obligated by ACF.

Line 11. Estimate for Next Quarter Ended. Enter in column (A) the estimate of SFAG grant award funds requested for the next quarter ending (refer to the next quarter ending entered at the top of this report).

Note: Section 405(c)(1) of the Act states ACF shall estimate the amount to be paid to each eligible State for each quarter, such estimate is to be based on a report filed by the State containing an estimate by the State of the total sum to be expended by the State in the quarter under the State program funded under section 403.

Appendix D—Section 3

Information To Be Reported as an Addendum to the Fourth Quarter TANF Financial Report

A. The following definitions and information with respect to the TANF program:

(1) The number of cases excluded from the overall work participation rate, the two-parent work participation rate, and the time-limit calculations because of the State's definition of ''families receiving assistance,'' together with an explanation of the basis for such exclusions;

(2) The State's definition of each work activity;

(3) A description of the transitional services provided to families no longer receiving assistance due to employment; and

(4) The State's description of how it will reduce the amount of assistance otherwise

payable to the family prorata (or more) with respect to any period during a month in which the individual refuses to engage in work without good cause.

B. The following information on separate State programs whose expenditures are counted by the State as MOE:

(1) A description of the specific program activities provided to eligible families;

(2) Each MOE program's statement of purpose (*i.e.,* how the program activity serves eligible families);

(3) The applicable definitions of each work activity;

(4) Whether the program activity had been previously authorized and allowable as of August 21, 1996, under section 403 of prior law;

(5) The FY 1995 State expenditures for each program activity not authorized and allowable as of August 21, 1996;

(6) The total number of eligible families served by each program activity as of the end of the fiscal year;

(7) The eligibility criteria for the families served under each program; and

(8) A certification that those families served met the State's criteria for eligible families.

Appendix E—TANF MOE Data Report—Section One—Disaggregated Data Collection for Families Receiving Assistance Under the Separate State Programs

Instructions and Definitions

General Instruction: The State agency should collect and report data for each data element shown below.

1. *State FIPS Code:* Enter your two-digit State code from the following listing. These codes are the standard codes used by the National Institute of Standards and Technology.

State	Code
Alabama	01
Alaska	02
American Samoa	60
Arizona	04
Arkansas	05
California	06
Colorado	08
Connecticut	09
Delaware	10
District of Columbia	11
Florida	12
Georgia	13
Guam	66
Hawaii	15
Idaho	16
Illinois	17
Indiana	18
Iowa	19
Kansas	20
Kentucky	21
Louisiana	22
Maine	23
Maryland	24
Massachusetts	25
Michigan	26
Minnesota	27
Mississippi	28
Missouri	29
Montana	30
Nebraska	31
Nevada	32
New Hampshire	33
New Jersey	34
New Mexico	35
New York	36
North Carolina	37
North Dakota	38
Ohio	39
Oklahoma	40
Oregon	41
Pennsylvania	42
Puerto Rico	72
Rhode Island	44
South Carolina	45
South Dakota	46
Tennessee	47
Texas	48
Utah	49
Vermont	50
Virgin Islands	78
Virginia	51
Washington	53
West Virginia	54
Wisconsin	55
Wyoming	56

2. *County FIPS Code:* Enter the three-digit code established by the National Institute of Standards and Technology for classification of counties and county equivalents. Codes were devised by listing counties alphabetically and assigning sequentially odd integers; e.g., 001, 003, 005, * * * A complete list of codes is available in Appendix F of the TANF Sampling and Statistical Methods Manual.

3. *Reporting Month:* Enter the four-digit year and two-digit month code that identifies the year and month for which the data are being reported.

4. *Stratum:*

Guidance: All families that receive assistance under separate State Programs (*i.e,* State MOE families) and are selected in the sample from the same stratum must be assigned the same stratum code. Valid stratum codes may range from ''00'' to ''99.'' States with stratified samples should provide the ACF Regional Office with a listing of the numeric codes utilized to identify any stratification. If a State opts to provide data for its entire caseload, enter the same stratum code (any two-digit number) for each State MOE family.

Instruction: Enter the two-digit stratum code.

Family-Level Data

Definition: For reporting purposes, the State MOE family means (a) all individuals receiving assistance as part of a family under the Separate State Programs; and (b) the following additional persons living in the household, if not included under (a) above:

(1) Parent(s) or caretaker relative(s) of any minor child receiving assistance;

(2) Minor siblings (including unborn children) of any child receiving assistance; and

(3) Any person whose income or resources would be counted in determining the family's eligibility for or amount of assistance.

5. *Case Number—Separate State MOE:*

Guidance: If the case number is less than the allowable eleven characters, a State may use lead zeros to fill in the number.

Instruction: Enter the number assigned by the State agency to uniquely identify the case.

6. *ZIP Code:* Enter the five-digit ZIP code for the State MOE family's place of residence for the reporting month.

7. *Disposition:*

Guidance: A family that did not receive any assistance for the reporting month but was listed on the monthly sample frame for the reporting month is ''listed in error.'' States are to complete data collection for all sampled cases that are not listed in error.

Instruction: Enter one of the following codes for each State MOE sampled case.

1 = Data collection completed
2 = Not subject to data collection/listed in error

8. *Number of Family Members:* Enter two digits that represent the number of members in the family receiving assistance under the Separate State Programs.

9. *Type of Family for Work Participation:*

Guidance: This data element will be used to identify the type of family (*i.e.,* the number of parents or care-taker relatives in the family receiving assistance) in order to calculate the all family and the two-parent family work participation rates. A family with a minor child head-of-household should be coded as either a one-parent family or two-parent family, whichever is appropriate. A family that includes a disabled parent will not be considered a two-parent family for purposes of the work participation rate. It is up to the State to consider whether a family with a non-custodial parent is a one-parent or two-parent family for the purposes of calculating the work participation rate.

Instruction: Enter the one-digit code that represents the type of family for purposes of calculating the work participation rates.

1=Single-Parent Family for participation rate purposes
2=Two-Parent Family for participation rate purposes
3=No Parent Family for participation rate purposes (does not include parents, care-taker relatives, or minor child heads-of-household

10. *Has the family received assistance under a State (Tribal) TANF Program within the past six months:* If the State MOE family has received assistance under a State (Tribal) TANF Program within the past six months, enter code ''1.'' Otherwise, enter ''2.''

1=Yes, family has received assistance under a State (Tribal) TANF program within the past six months.
2=No

11. *Receives Subsidized Housing:*

Guidance: Subsidized housing refers to housing for which money was paid by the Federal, State, or Local government or through a private social service agency to the family or to the owner of the housing to assist the family in paying rent. Two families sharing living expenses does not constitute subsidized housing.

Instruction: Enter the one-digit code that indicates whether or not the State MOE

family received subsidized housing for the reporting month.

1=Public housing
2=HUD rent subsidy
3=Other rent subsidy
4=No Housing subsidy

12. *Receives Medical Assistance:* Enter ''1'' if, for the reporting month, any State MOE family member is eligible to receive (*i.e.*, a certified recipient of) medical assistance under the State plan approved under Title XIX or ''2'' if no State MOE family member is eligible to receive medical assistance under the State plan approved under Title XIX.

1=Yes, receives Medical Assistance
2=No

13. *Receives Food Stamps:* If the State MOE family received Food Stamps for the reporting month, enter the one-digit code indicating the type of Food Stamp assistance. Otherwise, enter ''4.''

1=Yes, Food Stamp coupon allotment
2=Yes, cash
3=Yes, wage subsidy
4=No

14. *Amount of Food Stamp Assistance:*

Guidance: For situations in which the Food Stamp household differs from the State MOE family, code this element in a manner that most accurately reflects the resources available to the State MOE family.

Instruction: Enter the State MOE eligible family's authorized dollar amount of Food Stamps assistance for the reporting month. If the State MOE family did not receive any food stamps for the reporting month, enter ''0.''

15. *Receives Subsidized Child Care:*

Guidance: For the purpose of coding this data element, subsidized child care funded under the Child Care and Development Fund with funds that were transferred from the State TANF Program should be coded as ''2.''

Instruction: If the State MOE family receives subsidized child care for the reporting month, enter code ''1'', ''2'', ''3'', or ''4'', whichever is appropriate. Otherwise, enter code ''5.''

1=Yes, funded under the Separate State Programs
2=Yes, funded under the Child Care and Development Fund
3=Yes, funded under other Federal program (*e.g.*, TANF or SSBG)
4=Yes, funded under other State or local program 5=No

16. *Amount of Subsidized Child Care:*

Guidance: Subsidized child care means a grant by the Federal, State or Local government to a parent (or care-taker relative) to support, in part or whole, the cost of child care services provided by an eligible provider to an eligible child. The grant may be paid directly to the parent (or care-taker relative) or to a child care provider on behalf of the parent (or care-taker relative).

Instruction: Enter the dollar amount of subsidized child care that the State MOE family has received for services in the reporting month. If State MOE family did not receive any subsidized child care, enter ''0'' as the amount.

17. *Amount of Child Care Disregard:* Enter the total dollar amount of the State MOE family's actual disregard allowed for child care expenses.

18. *Amount of Child Support:* Enter the total dollar value of child support received on behalf of the State MOE family in the reporting month, which includes arrearages, recoupments, and pass-through amounts whether paid to the State or the family.

19. *Amount of the Families' Cash Resources:* Enter the total dollar amount of the State MOE family's cash resources for the reporting month.

Amount of Assistance Received and the Number of Months that the Family Has Received Each Type of Assistance Under the Separate State Programs

Guidance: Assistance means every form of support provided to State MOE families under the Separate State Program (including child care, work subsidies, and allowances to meet living expenses), except for the following:

(1) services that have no direct monetary value to an individual family and that do not involve implicit or explicit income support, such as counseling, case management, peer support and employment services that do not involve subsidies or other forms of income support; and

(2) one-time, short-term assistance (*i.e.*, assistance paid within a 30-day period, no more than once in any twelve-month period, to meet needs that do not extend beyond a 90-day period, such as automobile repair to retain employment and avoid welfare receipt and appliance repair to maintain living arrangements).

Instruction: For each type of assistance provided under the State's MOE Program, enter the dollar amount of assistance that the State MOE family received or that was paid on behalf of the State MOE family for the reporting month and the number of months that the State MOE family has received assistance under the State's Separate MOE programs. If, for a ''type of assistance'', no dollar amount of assistance was provided during the reporting month, enter ''0'' as the amount. If, for a ''type of assistance'', no assistance has ever been received by the TANF eligible family, enter ''0'' as the number of months of assistance.

20. *Cash and Cash Equivalents:*

A. *Amount*
B. *Number of Months*

21. *Educational:*

A. *Amount*
B. *Number of Months*

22. *Employment Services:*

A. *Amount*
B. *Number of Months*

23. *Work Subsidies:*

A. *Amount*
B. *Number of Months*

24. *Child Care:*

Guidance: Include only the child care funded directly by the Separate State Programs. Do not include child care funded under the TANF Program or the Child Care and Development Fund, even though some of the funds were transferred to the CCDF from the State TANF program.

A. *Amount*
B. *Number of Months*

25. *Transportation:*

A. *Amount*
B. *Number of Months*

26. *Other Supportive Services and Special Needs, including Assistance with Meeting Home Heating and Air Conditioning Costs:*

A. *Amount*
B. *Number of Months*

27. *Transitional Services:*

A. *Amount*
B. *Number of Months*

28. *Contributions to Individual Development Accounts:*

A. *Amount*
B. *Number of Months*

29. *Other:*

A. *Amount*
B. *Number of Months*

Reason for and Amount of Reduction in Assistance

For each reason for which the State MOE family received a reduction in assistance for the reporting month, enter the dollar amount of the reduction in assistance. Otherwise, enter ''0.''

30. *Work Requirements Sanction*

31. *Family Sanction for an Adult with No High School Diploma or Equivalent*

32. *Sanction for Teen Parent not Attending School*

33. *Non-Cooperation with Child Support*

34. *Failure to Comply with an Individual Responsibility Plan*

35. *Other Sanction*

36. *Recoupment of Prior Overpayment*

37. *Family Cap*

38. *Reduction Based on Family Moving into State From Another State*

39. *Reduction Based on Length of Receipt of Assistance*

40. *Other, Non-Sanction*

41. *Waiver Evaluation Research Group*

Guidance: In connection with waivers, approved to allow States to implement Welfare Reform Demonstrations, a State assigned a portion of its cases to a research group consisting of a control group (subject to the provisions of the regular, statutory AFDC program as defined by prior law) and an experimental group (subject to the provisions of the regular, statutory AFDC program as defined by prior law as modified by waivers). A state may choose, for the purpose of completing impact analyses, to continue a research group and thus maintain applicable control and experimental group treatment policies as they were implemented under their welfare reform demonstration (including prior law policies not modified by waivers), even if such policies are inconsistent with TANF. However, cases assigned to a non-experimental treatment group (*i.e.*, not part of the research group) may not apply prior law policies inconsistent with TANF unless such policies are specifically linked to approved waivers. Where a state continues waivers, but does not continue a research group for impact evaluation purposes, all cases in the demonstration site will be treated as non-experimental treatment group cases regardless of their original assignment as control or experimental cases.

Instruction: Enter the one-digit code that indicates the family's waiver evaluation case status.

Blank=Not applicable (no waivers apply to this case)
1=Control group (for impact analysis purposes)
2=Experimental group
3=Non-experimental treatment group

Person-Level Data

Person-level data has two sections: the adult and minor child head-of-household characteristic section and the child characteristics section. Section 419 of the Act defines adult and minor child. An adult is an individual that is not a minor child. A minor child is an individual who (a) has not attained 18 years of age or (b) has not attained 19 years of age and is a full-time student in a secondary school (or in the equivalent level of vocational or technical training.)

Adult and Minor Child Head-of-Household Characteristics

This section allows for coding up to six adults (or a minor child who is either a head-of-household or married to the head-of-household and up to five adults) in the State MOE family. A minor child who is either a head-of-household or married to the head-of-household should be coded as an adult and will hereafter be referred to as a ''minor child head-of-household.'' For each adult (or minor child head-of-household) in the State MOE family, complete the adult characteristics section.

If there are more than six adults (or a minor child head-of-household and five adults) in the State MOE family, use the following order to identify the persons to be coded: (1) the head-of-household; (2) parents in the eligible family receiving assistance; (3) other adults in the eligible family receiving assistance; (4) Parents not in the eligible family receiving assistance; (5) caretaker relatives not in the eligible family receiving assistance; and (6) other persons, whose income or resources count in determining eligibility for or amount of assistance of the eligible family receiving assistance, in descending order the person with the most income to the person with least income.

42. Family Affiliation:

Guidance: This data element is used both for (1) the adult or minor child head-of-household section and (2) the minor child section. The same coding schemes are used in both sections. Some of these codes may not be applicable for adults.

Instruction: Enter the one-digit code that shows the adult's (or minor child head-of-household's) relation to the eligible family receiving assistance.

1= Member of the eligible family receiving assistance

Not in eligible family receiving assistance, but in the household

2= Parent of minor child in the eligible family receiving assistance
3= Caretaker relative of minor child in the eligible family receiving assistance
4= Minor sibling of child in the eligible family receiving assistance
5= Person whose income or resources are considered in determining eligibility for or amount of assistance for the eligible family receiving assistance

43. *Noncustodial Parent Indicator:*

Guidance: A noncustodial parent means a parent who does not live with his/her child(ren). A noncustodial parent who lives in the State, may participate in work activities funded under the Separate State Programs. If the noncustodial parent participates in work activities, (s)he must be a member of the eligible family receiving assistance and be reported as part of the State MOE family.

Instruction: Enter the one-digit code that indicates the adult's (or minor child head-of-household's) noncustodial parent status.

1= Yes, a noncustodial parent
2= No, not a noncustodial parent

44. *Date of Birth:* Enter the eight-digit code for date of birth for the adult (or minor child head-of-household) under the Separate State Program in the format YYYYMMDD.

45. *Social Security Number:* Enter the nine-digit Social Security Number for the adult (or minor child head-of-household) in the format nnnnnnnnn.

46. *Race:* Enter the one-digit code for the race of the adult (or minor child head-of-household).

1= White, not of Hispanic origin
2= Black, not of Hispanic origin
3= Hispanic
4= American Indian or Alaska Native
5= Asian or Pacific Islander
6= Other
9= Unknown

47. *Gender:* Enter the one-digit code that indicates the adult's (or minor child head-of-household's) gender.

1= Male
2= Female

Receives Disability Benefits

The Act specifies five types of disability benefits. For each type of disability benefits, enter the one-digit code that indicates whether or not the adult (or minor child head-of-household) received the benefit.

48. *Receives Federal Disability Insurance Benefits:* Enter the one-digit code that indicates the adult (or minor child head-of-household) received Federal disability insurance benefits for the reporting month.

1=Yes, received benefits based on Federal disability status
2=No

49. *Receives Benefits Based on Federal Disability Status:* Enter the one-digit code that indicates the adult (or minor child head-of-household) received benefits based on Federal disability status for the reporting month.

1=Yes, received benefits based on Federal disability status
2=No

50. *Receives Aid Under Title XIV–APDT:* Enter the one-digit code that indicates the adult (or minor child head-of-household) received aid under a State plan approved under Title XIV for the reporting month.

1=Yes, received aid under Title XIV–APDT
2=No

51. *Receives Aid Under Title XVI–AABD:* Enter the one-digit code that indicates the adult (or minor child head-of-household) received aid under a State plan approved under Title XVI–AABD for the reporting month.

1=Yes, received aid under Title XVI–AABD
2=No

52. *Receives Aid Under Title XVI–SSI:* Enter the one-digit code that indicates the adult (or minor child head-of-household) received aid under a State plan approved under Title XVI–SSI for the reporting month.

1=Yes, received aid under Title XVI–SSI
2=No

53. *Marital Status:* Enter the one-digit code for the adult's (or minor child head-of-household's) marital status for the reporting month.

1=Single, never married
2=Married, living together
3=Married, but separated
4=Widowed
5=Divorced

54. *Relationship to Head-of-Household:*

Guidance: This data element is used both for (1) the adult or minor child head-of-household section and (2) the minor child section. The same coding schemes are used in both sections. Some of these codes may not be applicable for adults.

Instruction: Enter the two-digit code that shows the adult's (or minor child head-of-household's) relationship (including by marriage) to the head of the household, as defined by the Food Stamp Program or as determined by the State, (*i.e.*, the relationship to the principal person of each person living in the household.) If a minor child head-of-household, enter code ''01.''

01=Head of household
02=Spouse
03=Parent
04=Daughter or son (Natural or adoptive)
05=Stepdaughter or stepson
06=Grandchild or great grandchild
07=Other related person (brother, niece, cousin)
08=Foster child
09=Unrelated child
10=Unrelated adult

55. *Teen Parent With Child In the Family:*

Guidance: A teen parent is a person who is under 20 years of age and that person's child is also a member of the State MOE family.

Instruction: Enter the one-digit code that indicates the adult's (or minor child head-of-household's) teen parent status.

1=Yes, a teen parent
2=No

Educational Level

Educational level is divided into two parts; the highest level of education attained and the highest degree attained.

56. *Highest Level of Education Attained:* Enter the two-digit code to indicate the

highest level of education attained by the adult (or minor child head-of-household).

00=No formal education
01–12=Grade level completed in primary/secondary school including secondary level vocational school or adult high school

57. *Highest Degree Attained:* If the adult (or minor child head-of-household) has a degree(s), enter the one-digit code that indicates the highest degree attained. Otherwise, leave the field blank.

0=No degree
1=High school diploma, GED, or National External Diploma Program
2=Awarded Associate's Degree
3=Awarded Bachelor's Degree
4=Awarded graduate degree (Master's or higher)
5=Other credentials (degree, certificate, diploma, etc.)

58. *Citizenship/Alienage:*

Guidance: As described in TANF–ACF–PA–97–1, States have the flexibility to: (1) use State MOE funds to serve ''qualified'' aliens, including those who enter on or after August 22, 1996; (2) use Federal TANF funds to serve ''qualified'' aliens who arrived prior to the enactment of the PRWORA on August 22, 1996 [such aliens who arrived after enactment are barred from receiving Federal TANF funds for five years from the date of entry, except for certain aliens such as refugees and asylees]; (3) use State MOE funds to serve legal aliens who are not ''qualified''; and (4) use, under section 411(d) of PRWORA, State MOE funds to serve aliens who are not lawfully present in the U.S., but only through enactment of a State law, after the date of PRWORA enactment, which ''affirmatively provides'' for such benefits.

Instruction: Enter the two-digit code that indicates the adult's (or minor child head-of-household's) citizenship/alienage.

01=U.S. citizen, including naturalized citizens
02=Permanent resident who has worked forty qualifying quarters; alien who is a veteran with an honorable discharge from the U.S. Armed Forces or is on active duty in the U.S. Armed Forces, or spouse or unmarried dependent children of such alien
03=Qualified alien accorded refugee, Cuban or Haitian entrant, or Amerasian immigrant status (INS Form I–94) who has resided in the U.S. five years or less
04=Qualified alien granted political asylum five or less years ago; qualified alien granted a withholding of deportation by INS (under sec. 243(h) or sec. 241(b)(3) of the INA) five or less years ago.
05=Qualified alien, (including immigrant accorded permanent resident status (''green card''), parolee granted parole for at least one year under sec. 212(d)(5) of the INA, and certain battered aliens and their children who are determined to be qualified), who arrived in the U.S. prior to enactment (August 22, 1996) or who arrived in the U.S. on or after enactment and has resided in the U.S. more than five years
06=Qualified alien accorded refugee, Cuban or Haitian entrant, or Amerasian immigrant status (INS Form I–94) who has resided in the U.S. more than five years
07=Qualified alien granted political asylum or granted withholding of deportation by INS (under sec. 243(h) or sec. 241(b)(3) of the INA) more than five years ago;
08=Qualified alien (other than a refugee, Cuban or Haitian entrant, Amerasian immigrant, asylee, or alien whose deportation has been withheld under sec. 243(h) or sec. 241(b)(3) of the INA) who arrived in the U.S. on or after enactment and has resided in the U.S. less than 5 years.
09=Any alien who is not a qualified alien.
99=Unknown

59. *Employment Status:* Enter the one-digit code that indicates the adult's (or minor child head-of-household's) employment status.

1=Employed
2=Unemployed, looking for work
3=Not in labor force (*i.e,* unemployed, not looking for work, includes discouraged workers)

60. Work Participation Status:

Guidance: Disregarded from the participation rate means the State MOE family is not included in the calculation of the work participation rate.

Exempt means that the individual will not be penalized for failure to engage in work (*i.e.*, good cause exception); however, the State MOE family is included in the calculation of the work participation rate.

Instruction: Enter the two-digit code that indicates the adult's (or minor child head-of-household's) work participation status.

01=Disregarded from participation rate, single custodial parent with child under 12 months
02=Disregarded from participation rate because all of the following apply: required to participate, but not participating, sanctioned for the reporting month, but not sanctioned for more than 3 months within the preceding 12-month period
03=Disregarded, family is part of an ongoing research evaluation (as a member of a control group or experimental treatment group) approved under section 1115 of the Social Security Act
04=Disregarded from participation rate, is participating in a Tribal Work Program, and State has opted to exclude all Tribal Work Program participants from its Work Participation rate
05=Exempt, single custodial parent with child under age 6 and unavailability of child care
06=Exempt, disabled (not using an extended definition under a State waiver)
07=Exempt, caring for a severely disabled child (not using an extended definition under a State waiver)
08=A temporary good cause domestic violence waiver (not using an extended definition under a State waiver)
09=Exempt, State waiver
10=Exempt, other
11=Required to participate, but not participating, sanctioned for the reporting month and sanctioned for more than 3 months within the preceding 12-month period.
12=Required to participate, but not participating, sanctioned for the reporting month but not sanctioned for more than 3 months within the preceding 12-month period
13=Required to participate, but not participating and not sanctioned for the reporting month
14=Deemed engaged in work, single teen head-of-household or married teen who maintains satisfactory school attendance or is participating in education directly related to employment for an average of at least 20 hours per week during the reporting month
15=Deemed engaged in work, parent or relative (who is the only parent or caretaker relative in the family) with child under age 6 and parent engaged in work activities for at least 20 hours per week
16=Required to participate, participating but not meeting minimum participation requirements
17=Required to participate, and meeting minimum participation requirements
99=Not applicable (*e.g.*, person in household, but not in eligible family receiving assistance)

Adult Work Participation Activities

Guidance: To calculate the average number of hours per week of participation in a work activity, add the number of hours of participation across all weeks in the month and divide by the number of weeks in the month. Round to the nearest whole number.

Some weeks have days in more than one month. Include such a week in the calculation for the month that contains the most days of the week (*e.g.*, the week of July 27–August 2, 1997 would be included in the July calculation). Acceptable alternatives to this approach must account for all weeks in the fiscal year. One acceptable alternative is to include the week in the calculation for the month in which the Friday falls (*i.e.*, the JOBS approach). A second acceptable alternative is to count each month as having 4.33 weeks.

During the first or last month of any spell of assistance, a family may happen to receive assistance for only part of the month. If a family receives assistance for only part of a month, the State (Tribe) may count it as a month of participation if an adult (or minor child head-of-household) in the family (both adults, if they are both required to work) is engaged in work for the minimum average number of hours for the full week(s) that the family receives assistance in that month.

Instruction: For each work activity in which the adult (or minor child head-of-household) participated during the reporting month, enter the average number of hours per week of participation. For each work activity in which the adult (or minor child head-of-household) did not participate, enter zero as the average number of hours per week of participation.

61. *Unsubsidized Employment*

62. *Subsidized Private Sector Employment*
63. *Subsidized Public Sector Employment*
64. *Work Experience*
65. *On-the-job Training*
66. *Job Search and Job Readiness Assistance*

Instruction: Do not count hours of participation in job search and job readiness training beyond the TANF limit where allowed by waivers in this item. Instead count the hours of participation beyond the TANF limit in the item ''Additional Work Activities Permitted Under Waiver Demonstration.'' Otherwise, count the additional hours of work participation under the work activity ''Other Work Activities.''

67. *Community Service Programs*
68. *Vocational Educational Training*

Instruction: Do not count hours of participation in vocational educational training beyond the TANF 12 month life-time limit where allowed by waivers in this item. Instead count the hours of participation beyond the TANF limit in the item ''Additional Work Activities Permitted Under Waiver Demonstration.'' Otherwise, count the additional hours of work participation under the work activity ''Other Work Activities.''

69. *Job Skills Training Directly Related to Employment*
70. *Education Directly Related to Employment for Individuals with no High School Diploma or Certificate of High School Equivalency*
71. *Satisfactory School Attendance for Individuals with No High School Diploma or Certificate of High School Equivalency*
72. *Providing Child Care Services to an Individual who is Participating in a Community Service Program*
73. *Additional Work Activities Permitted Under Waiver Demonstration*

Instruction: Hours of participation in job search and job readiness training beyond the TANF limits as permitted by State waiver should be counted in this item. Otherwise, count such additional hours of work participation under the work activity ''Other Work Activities.''

74. *Other Work Activities*
75. *Required Hours of Work Under Waiver Demonstration:*

Guidance: In approving waivers, ACF specified hours of participation in several instances. One type of hour change in the welfare reform demonstrations, was the recognition, as part of a change in work activities and/or exemptions, that the hours individuals worked should be consistent with their abilities and in compliance with an employability or personal responsibility plan or other criteria in accordance to waiver terms and conditions. As the hour requirement in this case was integral and necessary to achieve the waiver purpose of appropriately requiring work activities to move individuals to self-sufficiency, the State could show inconsistency and could use the waiver hours instead of the hours in section 407. The waiver that increase work hour requirements would not be deemed inconsistent.

Instruction: If applicable, enter the two-digit number that represents the average number of hours per week of work participation required of the individual as described in the demonstration terms or in an employability or personal responsibility plan. Otherwise, leave blank or enter ''00.''

Amount of Earned Income

Earned income has two categories. For each category of earned income, enter the dollar amount of the adult's (or minor child head-of-household's) earned income.

76. *Earned Income Tax Credit (EITC):*

Guidance: Earned Income Tax Credit is a refundable tax credit for families and dependent children. EITC payments are received either monthly (as advance payment through the employer), annually (as a refund from IRS), or both.

Instruction: Enter the total dollar amount of the earned income tax credit actually received, whether received as an advance payment or a single payment (*e.g.*, tax refund), by the adult (minor child head-of-household) during the reporting month. If the State counts the EITC as a resource, report it here as earned income in the month received. If the State assumes an advance payment is applied for and obtained, only report what is actually received for this item.

77. *Wages, Salaries, and Other Earnings:*

Amount of Unearned Income

Unearned income has four categories. For each category of unearned income, enter the dollar amount of the adult's (minor child head-of-household's) unearned income.

78. *Social Security:* Enter the dollar amount of Social Security that the adult in the State MOE family has received for the reporting month.

79. *SSI:* Enter the dollar amount of SSI that the adult in the State MOE family has received for the reporting month.

80. *Worker's Compensation:* Enter the dollar amount of Worker's Compensation that the adult in the State MOE family has received for the reporting month.

81. *Other Unearned Income:*

Guidance: Other unearned income includes RSDI benefits, Veterans benefits, Unemployment Compensation, other government benefits, housing subsidy, contribution/income-in-kind, deemed income, Public Assistance or General Assistance, educational grants/scholarships/loans, other. Do not include Social Security, SSI, Worker's Compensation, value of Food Stamps assistance, the amount of the Child Care subsidy, and the amount of Child Support.

Instruction: Enter the dollar amount of other unearned income that the adult in the State MOE family has received for the reporting month.

Child Characteristics

This section allows for coding up to ten children in the State MOE family. A minor child head-of-household should be coded as an adult, not as a child. The youngest child should be coded as the first child in the family, the second youngest child as the second child, and so on. If the needs of an unborn child are included in the amount of assistance provided to the family, code the unborn child as one of the children. Do this by entering the Date-of-Birth as ''99999999'' and leave the other Child Characteristics fields blank.

If there are more than ten children in the State MOE family, use the following order to identify the persons to be coded: (1) children in the eligible family receiving assistance in order from youngest to oldest; (2) minor siblings of child in the eligible family receiving assistance from youngest to oldest; and (3) any other children.

82. *Family Affiliation:*

Guidance: This data element is used both for (1) the adult or minor child head-of-household section and (2) the minor child section. The same coding schemes are used in both sections. Some of these codes may not be applicable for children.

Instruction: Enter the one-digit code that shows the Child's relation to the eligible family receiving assistance.

1=Member of the eligible family receiving assistance

Not in eligible family receiving assistance, but in the household

2=Parent of minor child in the eligible family receiving assistance
3=Caretaker relative of minor child in the eligible family receiving assistance
4=Minor sibling of child in the eligible family receiving assistance
5=Person whose income is considered in determining eligibility for and amount of assistance for the eligible family receiving assistance

83. *Date of Birth:* Enter the eight-digit code for date of birth for this child under the Separate State Programs in the format YYYYMMDD.

84. *Social Security Number:* Enter the nine-digit Social Security Number for the child in the format nnnnnnnnn.

85. *Race:* Enter the one-digit code for the race of the State MOE child.

1=White, not of Hispanic origin
2=Black, not of Hispanic origin
3=Hispanic
4=American Indian or Alaska Native
5=Asian or Pacific Islander
6=Other
9=Unknown

86. *Gender:* Enter the one-digit code that indicates the child's gender.

1=Male
2=Female

Receives Disability Benefits

The Act specifies five types of disability benefits. Two of these types of disability benefits are applicable to children. For each type of disability benefits, enter the one-digit code that indicates whether or not the child received the benefit.

87. *Receives Benefits Based on Federal Disability Status:* Enter the one-digit code that indicates the child received benefits based on Federal disability status for the reporting month.

1=Yes, received benefits based on Federal disability status
2=No

88. *Receives Aid Under Title XVI–SSI:* Enter the one-digit code that indicates the child received aid under a State plan

approved under Title XVI–SSI for the reporting month.

1=Yes, received aid under Title XVI–SSI
2=No

89. *Relationship to Head-of-Household:*

Guidance: This data element is used both for (1) the adult or minor child head-of-household section and (2) the minor child section. The same coding schemes are used in both sections. Some of these codes may not be applicable for children.

Instruction: Enter the two-digit code that shows the child's relationship (including by marriage) to the head of the household, as defined by the Food Stamp Program or, principal person of each person living in the household.

01=Head of household
02=Spouse
03=Parent
04=Daughter or son (Natural or adoptive)
05=Stepdaughter or stepson
06=Grandchild or great grandchild
07=Other related person (brother, niece, cousin)
08=Foster child
09=Unrelated child
10=Unrelated adult

90. *Teen Parent With Child In the Family:*

Guidance: A teen parent is a person who is under 20 years of age and that person's child is also a member of the State MOE family.

Instruction: Enter the one-digit code that indicates the child's teen parent status.

1=Yes, a teen parent
2=No

Educational Level

Educational level is divided into two parts; the highest level of education attained and the highest degree attained.

91. *Highest Level of Education Attained:* Enter the two-digit code to indicate the highest level of education attained by the child.

00=No formal education
01–12=Grade level completed in primary/secondary school including secondary level vocational school or adult high school

92. *Highest Degree Attained:*

Guidance: This data element is used both for (1) the adult or minor child head-of-household section and (2) the minor child section. The same coding schemes are used in both sections. Some of these codes may not be applicable for children.

Instruction: If the child has a degree(s), enter the one-digit code that indicates the child's highest degree attained. Otherwise, leave the field blank.

0=No degree
1=High school diploma, GED, or National External Diploma Program
2=Awarded Associate's Degree
3=Awarded Bachelor's Degree
4=Awarded graduate degree (Master's or higher)
5=Other credentials (degree, certificate, diploma, etc.)
9=Not applicable

93. *Citizenship/Alienage:* Enter the two-digit code that indicates the child's citizenship/alienage. The coding for this data element is the same as for item number 52, on page 548.

94. *Cooperation with Child Support:* Enter the one-digit code that indicates whether this child's parent has cooperated with child support for this child.

1=Yes, parent cooperates with child support
2=No
3=Not applicable

Amount of Unearned Income

Unearned income has two categories. For each category of unearned income, enter the dollar amount of the child's unearned income.

95. *SSI:* Enter the dollar amount of SSI that the child in the State MOE family has received for the reporting month.

96. *Other Unearned Income:* Enter the dollar amount of other unearned income that the child in the State MOE family has received for the reporting month.

Appendix F—TANF MOE Data Report—Section Two Disaggregated Data Collection for Families No Longer Receiving Assistance Under the Separate State Programs

Instructions and Definitions

General Instruction: The State agency should collect and report data for each data element shown below.

1. *State FIPS Code:* Enter your two-digit State code from the following listing. These codes are the standard codes used by the National Institute of Standards and Technology.

State	Code
Alabama	01
Alaska	02
American Samoa	60
Arizona	04
Arkansas	05
California	06
Colorado	08
Connecticut	09
Delaware	10
District of Columbia	11
Florida	12
Georgia	13
Guam	66
Hawaii	15
Idaho	16
Illinois	17
Indiana	18
Iowa	19
Kansas	20
Kentucky	21
Louisiana	22
Maine	23
Maryland	24
Massachusetts	25
Michigan	26
Minnesota	27
Mississippi	28
Missouri	29
Montana	30
Nebraska	31
Nevada	32
New Hampshire	33
New Jersey	34
New Mexico	35
New York	36
North Carolina	37
North Dakota	38
Ohio	39
Oklahoma	40
Oregon	41
Pennsylvania	42
Puerto Rico	72
Rhode Island	44
South Carolina	45
South Dakota	46
Tennessee	47
Texas	48
Utah	49
Vermont	50
Virgin Islands	78
Virginia	51
Washington	53
West Virginia	54
Wisconsin	55
Wyoming	56

2. *County FIPS Code:* Enter the three-digit code established by the National Institute of Standards and Technology for classification of counties and county equivalents. Codes were devised by listing counties alphabetically and assigning sequentially odd integers; e.g., 001, 003, 005, ... A complete list of codes is available in Appendix F of the TANF Sampling and Statistical Methods Manual.

3. *Reporting Month:* Enter the four-digit year and two-digit month code that identifies the year and month for which the data are being reported.

4. *Stratum:*

Guidance: All families that receive assistance under separate State Programs (*i.e.*, State MOE families) and are selected in the sample from the same stratum must be assigned the same stratum code. Valid stratum codes may range from ''00'' to ''99.'' States with stratified samples should provide the ACF Regional Office with a listing of the numeric codes utilized to identify any stratification. If a State opts to provide data for its entire caseload, enter the same stratum code (any two-digit number) for each State MOE family.

Instruction: Enter the two-digit stratum code.

Family-Level Data

Definition: For reporting purposes, the State MOE family means (a) all individuals receiving assistance as part of a family under the Separate State Programs; and (b) the following additional persons living in the household, if not included under (a) above:

(1) Parent(s) or caretaker relative(s) of any minor child receiving assistance;

(2) Minor siblings (including unborn children) of any child receiving assistance; and

(3) Any person whose income or resources would be counted in determining the family's eligibility for or amount of assistance.

5. *Case Number:*

Guidance: If the case number is less than the allowableeleven characters, a State may use lead zeros to fill in thenumber.

Instruction: Enter the number that was assigned by theState agency to uniquely identify the State MOE family.

6. *ZIP Code:* Enter the five-digit ZIP code for the family's place of residence for the reporting month.

7. *Disposition:* Enter one of the following codes for each State MOE family.

1=Data collection completed
2=Not subject to data collection/listed in error

8. *Reason for Closure:*

Guidance: A closed case is a family whose assistance was terminated for the reporting month, but received assistance under the State's MOE Program in the prior month. A temporally suspended case is not a closed case. If there is more than one applicable reason for closure, determine the principal (*i.e.,* most relevant) reason. If two or more reasons are equally relevant, use the reason with the lowest numeric code.

Instruction: Enter the one-digit code that indicates the reason for the State MOE family no longer receiving assistance.

1=Employment
2=Marriage
3=Five-Year Time Limit
4=Sanction
5=State policy
6=Minor child absent from the home for a significant time period
7=Transfer to State TANF Program
8=Other

9. *Number of Family Members:* Enter two digits that represent the number of members in the State MOE family, which received assistance under the Separate State Programs.

10. *Receives Subsidized Housing:*

Guidance: Subsidized housing refers to housing for which money was paid by the Federal, State, or Local government or through a private social service agency to the family or to the owner of the housing to assist the family in paying rent. Two families sharing living expenses does not constitute subsidized housing.

Instruction: Enter the one-digit code that indicates whether or not the State MOE family received subsidized housing for the sample month.

1=Public housing
2=HUD rent subsidy
3=Other rent subsidy
4=No housing subsidy

11. *Receives Medical Assistance:* Enter ''1'' if, for the sample month, any State MOE family member is eligible to receive (*i.e.,* a certified recipient of) medical assistance under the State plan approved under Title XIX or ''2'' if no State MOE family member is eligible to receive medical assistance under the State plan approved under Title XIX.

1=Yes, receives medical assistance
2=No

12. *Receives Food Stamps:* If the State MOE family received Food Stamps for the sample month, enter the one-digit code indicating the type of Food Stamp assistance. Otherwise, enter ''4.''

1=Yes, Food Stamp coupon allotment
2=Yes, cash
3=Yes, wage subsidy
4=No

13. *Amount of Food Stamp Assistance:*

Guidance: For situations in which the Food Stamp household differs from the TANF family, code this element in a manner that most accurately reflects the resources available to the TANF family.

Instruction: Enter the State MOE family's authorized dollar amount of Food Stamp assistance for the reporting month. If the State MOE family did not receive any food stamps for the reporting month, enter ''0.''

14. *Receives Subsidized Child Care:*

Guidance: For the purpose of coding this data element, ubsidized child care funded under the Child Care and Development Fund with funds that were transferred from the State TANF Program should be coded as ''2.''

Instruction: If the State MOE family receives subsidized child care for the reporting month, enter code ''1'', ''2'', ''3'', or ''4'', whichever is appropriate. Otherwise, enter code ''5.''

1=Yes, funded under the Separate State Programs
2=Yes, funded under the Child Care and Development Fund
3=Yes, funded under other Federal program (*e.g.,* TANF or SSBG)
4=Yes, funded under other State or local program
5=No

15. *Amount of Subsidized Child Care:*

Guidance: Subsidized child care means a grant by the Federal, State or Local government to a parent (or care-taker relative) to support, in part or whole, the cost of child care services provided by an eligible provider to an eligible child. The grant may be paid directly to the parent (or care-taker relative) or to a child care provider on behalf of the parent (or care-taker relative).

Instruction: Enter the dollar amount of subsidized child care that the State MOE family has received for services in the reporting month. If the State MOE family did not receive any subsidized child care for the reporting month, enter ''0.''

Person-Level Data

Person-level data has two sections: the adult and minor child head-of-household characteristic section and the child characteristics section. Section 419 of the Act defines adult and minor child. An adult is an individual that is not a minor child. A minor child is an individual who (a) has not attained 18 years of age or (b) has not attained 19 years of age and is a full-time student in a secondary school (or in the equivalent level of vocational or technical training.)

Adult and Minor Child Head-of-Household Characteristics

This section allows for coding up to six adults (or a minor child head-of-household and up to five adults) in the State MOE family. A minor child head-of-Household should be coded as an adult. For each adult (or minor child head-of-household) in the State MOE family, complete the adult characteristics section.

If there are more than six adults (or a minor child head-of-household and five adults) in the State MOE family, use the following order to identify the persons to be coded: (1) the head-of-household; (2) parents in the eligible family receiving assistance; (3) other adults in the eligible family receiving assistance; (4) Parents not in the eligible family receiving assistance; (5) caretaker relatives not in the eligible family receiving assistance; and (6) other persons, whose income or resources count in determining eligibility for or amount of assistance of the eligible family receiving assistance, in descending order the person with the most income to the person with least income.

16. *Family Affiliation:*

Guidance: This data element is used both for (1) the adult or minor child head-of-household section and (2) the minor child section. The same coding schemes are used in both sections. Some of these codes may not be applicable for adults.

Instruction: Enter the one-digit code that shows the adult's (minor child head-of-household's) relation to the eligible family receiving assistance.

1=Member of the eligible family receiving assistance

Not in eligible family receiving assistance, but in the household

2=Parent of minor child in the eligible family receiving assistance
3=Caretaker relative of minor child in the eligible family receiving assistance
4=Minor sibling of child in the eligible family receiving assistance
5=Person whose income or resources are considered in determining eligibility for or amount of assistance for the eligible family receiving assistance

17. *Date of Birth:* Enter the eight-digit code for date of birth for this adult (or minor child head-of-household) under Separate State Programs in the format YYYYMMDD.

18. *Social Security Number:* Enter the nine-digit Social Security Number for the adult (or minor child head-of-household) in the format nnnnnnnnn.

19. *Race:* Enter the one-digit code for the race of the State MOE adult (or minor child head-of-household).

1=White, not of Hispanic origin
2=Black, not of Hispanic origin
3=Hispanic
4=American Indian or Alaska Native
5=Asian or Pacific Islander
6=Other
9=Unknown

20. *Gender:* Enter the one-digit code that indicates the adult's (or minor child head-of-household's) gender.

1=Male
2=Female

Receives Disability Benefits

The Act specifies five types of disability benefits. For each type of disability benefits, enter the one-digit code that indicates whether or not the adult (or minor child head-of-household) received the benefit.

21. *Receives Federal Disability Insurance Benefits:* Enter the one-digit code that indicates the adult (or minor child head-of-household) received Federal disability insurance benefits for the reporting month.

1=Yes, received Federal disability insurance
2=No

22. *Receives Benefits Based on Federal Disability Status:* Enter the one-digit code that indicates the adult (or minor child head-of-household) received benefits based on Federal disability status for the reporting month.

1=Yes, received benefits based on Federal disability status
2=No

23. *Receives Aid Under Title XIV–APDT:* Enter the one-digit code that indicates the adult (or minor child head-of-household) received aid under a State plan approved under Title XIV for the reporting month.

1=Yes, received aid under Title XIV–APDT
2=No

24. *Receives Aid Under Title XVI–AABD:* Enter the one-digit code that indicates the adult (or minor child head-of-household) received aid under a State plan approved under Title XVI–AABD for the reporting month.

1=Yes, received aid under Title XVI–AABD
2=No

25. *Receives Aid Under Title XVI–SSI:* Enter the one-digit code that indicates the adult (or minor child head-of-household) received aid under a State plan approved under Title XVI–SSI for the reporting month.

1=Yes, received aid under Title XVI–SSI
2=No

26. *Marital Status:* Enter the one-digit code for the marital status of the adult (or minor child head-of-household).

1=Single, never married
2=Married, living together
3=Married, but separated
4=Widowed
5=Divorced

27. *Relationship to Head-of-Household:*

Guidance: This data element is used both for (1) the adult or minor child head-of-household section and (2) the minor child section. The same coding schemes are used in both sections. Some of these codes may not be applicable for adults.

Instruction: Enter the two-digit code that shows the adult's (or minor child head-of-household's) relationship (including by marriage) to the head of the household, as defined by the Food Stamp Program or, principal person of each person living in the household. If a minor child head-of-household, enter code ''01.''

01=Head of household
02=Spouse
03=Parent
04=Daughter or son
05=Stepdaughter or stepson
06=Grandchild or great grandchild
07=Other related person (brother, niece, cousin)
08=Foster child
09=Unrelated child
10=Unrelated adult

28. *Teen Parent With Child In the Family:*

Guidance: A teen parent is a person who is under 20 years of age and that person's child is also a member of the State MOE family.

Instruction: Enter the one-digit code that indicates the adult's (or minor child head-of-household's) teen parent status.

1=Yes, a teen parent
2=No

Educational Level

Educational level is divided into two parts: the highest level of education attained and the highest degree attained.

29. *Highest Level of Education Attained:* Enter the two-digit code to indicate the highest level of education attained by the adult (or minor child head-of-household).

00=No formal education
01–12=Grade level completed in primary/secondary school including secondary level vocational school or adult high school

30. *Highest Degree Attained:* If the adult (or minor child head-of-household) has a degree(s), enter the one-digit code that indicates the adult's (or minor child head-of-household's) highest degree attained. Otherwise, leave the field blank.

0=No degree
1=High school diploma, GED, or National External Diploma Program
2=Awarded Associate's Degree
3=Awarded Bachelor's Degree
4=Awarded graduate degree (Master's or higher)
5=Other credentials (degree, certificate, diploma, etc.)

31. *Citizenship/Alienage:*

Guidance: As described in TANF–ACF–PA–97–1, States have the flexibility to: (1) use State MOE funds to serve ''qualified'' aliens, including those who enter on or after August 22, 1996; (2) use Federal TANF funds to serve ''qualified'' aliens who arrived prior to the enactment of the PRWORA on August 22, 1996 [such aliens who arrived after enactment are barred from receiving Federal TANF funds for five years from the date of entry, except for certain aliens such as refugees and asylees]; (3) use State MOE funds to serve legal aliens who are not ''qualified''; and (4) use, under section 411(d) of PRWORA, State MOE funds to serve aliens who are not lawfully present in the U.S., but only through enactment of a State law, after the date of PRWORA enactment, which ''affirmatively provides'' for such benefits.

Instruction: Enter the two-digit code that indicates the adult's (or minor child head-of-household's) citizenship/alienage.

01=U.S. citizen, including naturalized citizens
02=Permanent resident who has worked forty qualifying quarters; alien who is a veteran with an honorable discharge from the U.S. Armed Forces or is on active duty in the U.S. Armed Forces, or spouse or unmarried dependent children of such alien
03=Qualified alien accorded refugee, Cuban or Haitian entrant, or Amerasian immigrant status (INS Form I–94) who has resided in the U.S. five years or less
04=Qualified alien granted political asylum five or less years ago; qualified alien granted a withholding of deportation by INS (under sec. 243(h) or sec. 241(b)(3) of the INA) five or less years ago.
05=Qualified alien, (including immigrant accorded permanent resident status (''green card''), parolee granted parole for at least one year under sec. 212(d)(5) of the INA, and certain battered aliens and their children who are determined to be qualified), who arrived in the U.S. prior to enactment (August 22, 1996) or who arrived in the U.S. on or after enactment and has resided in the U.S. more than five years
06=Qualified alien accorded refugee, Cuban or Haitian entrant, or Amerasian immigrant status (INS Form I–94) who has resided in the U.S. more than five years
07=Qualified alien granted political asylum or granted withholding of deportation by INS (under sec. 243(h) or sec. 241(b)(3) of the INA) more than five years ago;
08=Qualified alien (other than a refugee, Cuban or Haitian entrant, Amerasian immigrant, asylee, or alien whose deportation has been withheld under sec. 243(h) or sec. 241(b)(3) of the INA) who 1arrived in the U.S. on or after enactment and has resided in the U.S. less than 5 years.
09=Any alien who is not a qualified alien.
99=Unknown

32. *Employment Status:* Enter the one-digit code that indicates the adult's (or minor child head-of-household's) employment status.

1=Employed
2=Unemployed, looking for work
3=Not in labor force (*i.e,* unemployed, not looking for work, includes discouraged workers))

Amount of Earned Income

For each category of earned income, enter the dollar amount of the adult's (or minor child head-of-household's) earned income.

33. *Earned Income Tax Credit (EITC):*

Guidance: Earned Income Tax Credit is a refundable tax credit for families and dependent children. EITC payments are received either monthly (as advance payment through the employer), annually (as a refund from IRS), or both.

Instruction: Enter the total dollar amount of the earned income tax credit actually received, whether received as an advance payment or a single payment (*e.g.,* tax refund), by the adult (minor child head-of-household) during the reporting month. If the State counts the EITC as a resource, report it here as earned income in the month received. If the State assumes an advance payment is applied for and obtained, only report what is actually received for this item.

34. *Wages, Salaries, and Other Earnings*

Amount of Unearned Income

35. *Unearned Income:* Enter the dollar amount of the adult's (or minor child head-of-household's) unearned income.

Child Characteristics

This section allows for coding up to ten children in the State MOE family. A minor child head-of-household should be coded as an adult, not as a child. The youngest child should be coded as the first child in the family, the second youngest child as the

second child, and so on. If the needs of an unborn child are included in the amount of assistance provided to the family, code the unborn child as one of the children. Do this by entering the Date-of-Birth as ''99999999'' and leave the other Child Characteristics fields blank.

If there are more than ten children in the State MOE family, use the following order to identify the persons to be coded: (1) children in the eligible family receiving assistance in order from youngest to oldest; (2) minor siblings of child in the eligible family receiving assistance from youngest to oldest; and (3) any other children.

36. *Family Affiliation:*

Guidance: This data element is used both for (1) the adult or minor child head-of-household section and (2) the minor child section. The same coding schemes are used in both sections. Some of these codes may not be applicable for children.

Instruction: Enter the one-digit code that shows the Child's relation to the eligible family receiving assistance.

1=Member of the eligible family receiving assistance

Not in eligible family receiving assistance, but in the household

2=Parent of minor child in the eligible family receiving assistance
3=Caretaker relative of minor child in the eligible family receiving assistance
4=Minor sibling of child in the eligible family receiving assistance
5=Person whose income is considered in determining eligibility for and amount of assistance for the eligible family receiving assistance

37. *Date of Birth:* Enter the eight-digit code for date of birth for this child under the Separate State Programs in the format YYYYMMDD.

38. *Social Security Number:* Enter the nine-digit Social Security Number for the child in the format nnnnnnnnn.

39. *Race:* Enter the one-digit code for the race of the State MOE child.

1=White, not of Hispanic origin
2=Black, not of Hispanic origin
3=Hispanic
4=American Indian or Alaska Native
5=Asian or Pacific Islander
6=Other
9=Unknown

40. *Gender*: Enter the one-digit code that indicates the child's gender.

1=Male
2=Female

Receives Disability Benefits

The Act specifies five types of disability benefits. Two of these types of disability benefits are applicable to children. For each type of disability benefits, enter the one-digit code that indicates whether or not the child received the benefit.

41. *Receives Benefits Based on Federal Disability Status:* Enter the one-digit code that indicates the child received benefits based on Federal disability status for the reporting month.

1=Yes, received benefits based on Federal disability status
2=No

42. *Receives Aid Under Title XVI–SSI:* Enter the one-digit code that indicates the child received aid under a State plan approved under Title XVI–SSI for the reporting month.

1=Yes, received aid under Title XVI–SSI
2=No

43. *Relationship to Head-of-Household:*

Guidance: This data element is used both for (1) the adult or minor child head-of-household section and (2) the minor child section. The same coding schemes are used in both sections. Some of these codes may not be applicable for children.

Instruction: Enter the two-digit code that shows the relationship (including by marriage) to the head of the household, as defined by the Food Stamp Program or, principal person of each person living in the household.

01=Head of household
02=Spouse
03=Parent
04=Daughter or son
05=Stepdaughter or stepson
06=Grandchild or great grandchild
07=Other related person (brother, niece, cousin)
08=Foster child
09=Unrelated child
10=Unrelated adult

44. *Teen Parent With Child In the Family:*

Guidance: A teen parent is a person who is under 20 years of age and that person's child is also a member of the State MOE family.

Instruction: Enter the one-digit code that indicates the child's teen parent status.

1=Yes, a teen parent
2=No

Educational Level

Educational level is divided into two parts; the highest level of education attained and the highest degree attained.

45. *Highest Level of Education Attained:* Enter the two-digit code to indicate the highest level of education attained by the child.

00=No formal education
01–12=Grade level completed in primary/secondary school including secondary level vocational school or adult high school

46. *Highest Degree Attained:*

Guidance: This data element is used both for (1) the adult or minor child head-of-household section and (2) the minor child section. The same coding schemes are used in both sections. Some of these codes may not be applicable for children.

Instruction: If the child has a degree(s), enter the one-digit code that indicates the child's highest degree attained. Otherwise, leave the field blank.

0=No degree
1=High school diploma, GED, or National External Diploma Program
2=Awarded Associate's Degree
3=Awarded Bachelor's Degree
4=Awarded graduate degree (Master's or higher)
5=Other credentials (degree, certificate, diploma, etc.)

47. *Citizenship/Alienage:* Enter the two-digit code that indicates the child's citizenship/alienage. The coding for this data element is the same as for item number 26, on page 583.

48. Cooperation with Child Support: Enter the one-digit code that indicates this child's parent has cooperated with child support for this child.

1=Yes, child's parent has cooperated with child support
2=No, child's parent has not cooperated with child support
3=Not applicable

49. *Unearned Income:* Enter the dollar amount of the child 's unearned income.

Appendix G—TANF MOE Data Report—Section Three—Aggregated Data Collection for Families Receiving Assistance Under the Separate State Programs

Instructions and Definitions

1. *State FIPS Code:* Enter your two-digit State code.

2. *Calendar Quarter:* The four calendar quarters are as follows:

First quarter	January–March.
Second quarter	April–June.
Third quarter	July–September.
Fourth quarter	October–December.

Enter the four-digit year and one-digit quarter code (in the format YYYYQ) that identifies the calendar year and quarter for which the data are being reported (*e.g.*, first quarter of 1997 is entered as ''19971'').

Active Cases

For purposes of completing this report, include all TANF eligible families receiving assistance under the Separate State programs, *i.e.*, State MOE families. All counts of families and recipients should be unduplicated monthly totals.

3. *Total Number of Families:* Enter the number of families receiving assistance under the Separate State Programs for each month of the quarter. The total in this item should equal the sum of the number of two-parent families (in item #4), the number of one-parent families (in item #5) and the number of no-parent families (in item #6).

A. *First Month*:
B. *Second Month*:
C. *Third Month*:

4. *Total Number of Two-parent Families:* Enter the total number of two-parent families receiving assistance under the Separate State Programs for each month of the quarter.

A. *First Month*:
B. *Second Month*:
C. *Third Month*:

5. *Total Number of One-Parent Families:* Enter the total number of one-parent families receiving assistance under the Separate State Programs for each month of the quarter.

A. *First Month*:
B. *Second Month*:
C. *Third Month*:

6. *Total Number of No-Parent Families:* Enter the total number of no-parent families

receiving assistance under the Separate State Programs for each month of the quarter.

A. *First Month*:
B. *Second Month*:
C. *Third Month*:

7. *Total Number of Recipients:* Enter the total number of recipients receiving assistance under the Separate State Programs for each month of the quarter. The total in this item should equal the sum of the number of adult recipients (in item #8) and the number of child recipients (in item #9).

A. *First Month*:
B. *Second Month*:
C. *Third Month*:

8. *Total Number of Adult Recipients:* Enter the total number of adult recipients receiving assistance under the Separate State Programs for each month of the quarter.

A. *First Month*:
B. *Second Month*:
C. *Third Month*:

9. *Total Number of Child Recipients:* Enter the total number of child recipients receiving assistance under the Separate State Programs for each month of the quarter.

A. *First Month*:
B. *Second Month*:
C. *Third Month*:

10. *Total Number of Non-Custodial Parents Participating in Work Activities:* Enter the total number of non-custodial parents participating in work activities under the Separate State Programs for each month of the quarter.

A. *First Month*:
B. *Second Month*:
C. *Third Month*:

11. *Total Number of Minor Child Heads-of-Household:* Enter the total number of minor child head-of-household families receiving assistance under the Separate State Programs for each month of the quarter.

A. *First Month*:
B. *Second Month*:
C. *Third Month*:

12. *Total Number of Births:* Enter the total number of births for families receiving assistance under the Separate State Programs for each month of the quarter.

A. *First Month*:
B. *Second Month*:
C. *Third Month*:

13. *Total Number of Out-of-Wedlock Births:* Enter the total number of out-of-wedlock births for families receiving assistance under the Separate State Programs for each month of the quarter.

A. *First Month*:
B. *Second Month*:
C. *Third Month*:

14. *Total Amount of Assistance:* Enter the dollar value of all assistance (cash and non-cash) provided to families under the Separate State Programs for each month of the quarter. Round the amount of assistance to the nearest dollar.

A. *First Month*:
B. *Second Month*:
C. *Third Month*:

Closed Cases

15. *Total Number of Closed Cases:* Enter the total number of closed cases for each month of the quarter.

A. *First Month*:
B. *Second Month*:
C. *Third Month*:

Appendix H—Sampling Specifications

1. Sample Methodology

The sample methodology must conform to principles of probability sampling, *i.e.*, each family in the population of interest must have a known, non-zero probability of selection and computational methods of estimation must lead to a unique estimate. The State must construct a sample frame for each month in the annual sample period and must select approximately one-twelfth of the required minimum annual sample size from each monthly sample frame.

The recommended method of sample selection is stratified systematic random sampling.

2. Sample frame requirements for

a. *families receiving assistance under the state TANF Program (i.e., the active TANF sample) are:*

The monthly TANF sample frame must consist of an unduplicated list of all families who receive assistance under the State TANF Program for the reporting month by the end of the reporting month. Only families with a minor child who resides with a custodial parent or other adult relative or a pregnant woman may receive assistance.

b. *families no longer receiving assistance under the State TANF Program (i.e., the closed TANF sample) are:*

For closed cases, the monthly TANF sample frame must consist of an unduplicated list of all families whose assistance under the State TANF Program was terminated for the reporting month (do not include families whose assistance was temporarily suspended), but received assistance under the State's TANF Program in the prior month. Thus, TANF eligible families that are transferred to a Separate State Program are closed cases for the State TANF Program.

c. *families receiving assistance under the Separate State Programs (i.e., the active Separate State sample) are:*

The monthly Separate State sample frame must consist of an unduplicated list of all TANF-eligible families who receive assistance under the Separate State Programs for the reporting month by the end of the reporting month.

d. *families no longer receiving assistance under the Separate State Programs (i.e., the closed Separate State sample) are:*

For closed cases, the monthly Separate State sample frame must consist of an unduplicated list of all families who assistance under the Separate State Programs was terminated for the reporting month (do not include families whose assistance was temporarily suspended), but received assistance under the Separate State Programs in the prior month. Thus, State MOE families that are transferred to a State TANF Program are closed cases for the Separate State Programs.

3. Sample Size Requirement

a. *for families receiving assistance under a State TANF Program are:*

The minimum required annual sample size for families receiving assistance is 3000 families, of which 600 families must be newly, approved applicants. Of the 2400 families that have received ongoing assistance approximately 25% (600 families) must be two-parent TANF families. We established the minimum required sample sizes to provide reasonably precise estimates (*e.g.*, a precision of about plus or minus 2 percentage points at a 95% confidence level) for such proportions as the work participation rates for all families and for two-parent families, as well as for demographic and case characteristics of newly, approved TANF families and all TANF families.

b. *for families no longer receiving assistance under a State TANF Program are:*

The minimum required annual sample size for the sample of families no longer receiving assistance (*i.e.*, closed cases) is 800 families.

c. *for families receiving assistance under a Separate State Programs are:*

The minimum required annual sample size for families receiving assistance under the Separate State Programs is 3000 families, of which 600 families must be newly, approved applicants. Of the 2400 families that have received ongoing assistance approximately 25% (600 families) must be two-parent TANF-eligible families. We established the minimum required sample sizes to provide reasonably precise estimates (*e.g.*, a precision of about plus or minus 2 percentage points at a 95% confidence level) for such proportions as the work participation rates for all families and for two-parent families, as well as for demographic and case characteristics of State MOE families.

d. *for families no longer receiving assistance under a Separate State Programs are:*

The minimum required annual sample size for the sample of families no longer receiving assistance (*i.e.*, closed cases) under the Separate State Programs is 800 families.

4. What must States submit to ACF?

Each State that opts to sample its caseloads must submit the following:

a. Each State must submit for approval its annual sampling plan or any changes to its currently approved sampling plan at least sixty (60) calendar days before the start of the annual period. If the State's sampling plan is unchanged from the previous year, the State is not required to resubmit the sampling plan. The sampling plan must satisfy the requirements for plan approval as specified in Section 1300 of the TANF Sampling and Statistical Methods Manual and includes the following:

i. Documentation of methods for constructing and maintaining the sample frame(s), including assessment of frame completeness and any potential problems associated with using the sample frame(s);

ii. Documentation of methods for selecting the sample cases from the sample frame(s); and

iii. Documentation of methods for estimating case characteristics and their

sampling errors, including the computation of weights, where appropriate.

b. Each State must submit the estimated average monthly caseload for the annual sample period and the computed sample interval (if applicable) to the ACF Regional Administrator thirty (30) calendar days before the beginning of the annual sample period, *i.e.,* by September 1 for the October sample selection. States must submit the monthly list of selected sample cases (including reserve pool cases, if applicable) within 10 days of the date of selection specified in the State sampling plan.

c. Each State must submit the total number of families receiving assistance under the State TANF Program by stratum for each month in the annual sample period, the total number of families no longer receiving assistance under the State TANF Program (if stratified, by stratum) for each month in the annual sample period, the total number of families receiving assistance under the Separate State Programs by stratum for each month in the annual sample period, and the total number of families no longer receiving assistance under the Separate State Programs (if stratified, by stratum) for each month in the annual sample period. This data is required for weighting the sample results in order to produce estimates for the entire caseload.

Appendix I—Statutory Reference Table for Appendix A

Data elements	Justification
1. State FIPS Code	Implicit in administering data collection system.
2. County FIPS Code	411(a)(1)(A)(i).
3. Tribal Code	Implicit in administering data collection system.
4. Reporting Month	Implicit in administering data collection system.
5. Stratum	Implicit in administering data collection system.
Family Level Data—Items 6–44.	
6. Case Number	Implicit in administering data collection system.
7. ZIP Code	Needed for geographic coding (and rural/urban analyses) and is readily available.
8. Funding Stream	411(a)(1)(A)(xii): Use in calculation of participation rate.
9. Disposition	Implicit in administering data collection system.
10. New Applicant	411(b), requires the Secretary to report to Congress on families applying for TANF assistance. This element identifies applicants that are newly, approved families receiving assistance.
11. Number of Family Members	411(a)(1)(A)(iv).
12. Type of Family for Work Participation	411(a)(1)(A)(xii): Use in calculation of participation rate.
13. Receives Subsidized Housing	411(a)(1)(A)(ix).
14. Receives Medical Assistance	411(a)(1)(A)(ix).
15. Receives Food Stamps	411(a)(1)(A)(ix).
16. Amount of Food Stamp Assistance	411(a)(1)(A)(ix).
17. Receives Subsidized Child Care	411(a)(1)(A)(ix).
18. Amount of Subsidized Child Care	411(a)(1)(A)(ix).
19. Amount of Child Care Disregard	The CCDF sample will not capture children whose child care is funded by TANF. The data element is collected here because it is required under CCDF and this is the most cost-effective way to capture TANF Child Care information. (See Sec. 658K(a)(2)(C)).
20. Amount of Child Support	411(a)(1)(A)(xiv): Break-out of unearned income.
21. Amount of the Families' Cash Resources	411(b), requires the Secretary to report to Congress on financial circumstances of families receiving TANF assistance.
Amount of Assistance Received and Number of Months the Family Received Assistance by Type under the State TANF Program—Items 22–31 are types of assistance.	
22. Cash and Cash Equivalents	411(a)(1)(A) (x) & (xiii).
23. Educational	411(a)(1)(A) (x) & (xiii).
24. Employment Services	411(a)(1)(A) (x) & (xiii).
25. Work Subsidies	411(a)(1)(A) (x) & (xiii).
26. TANF Child Care	411(a)(1)(A) (x) & (xiii).
27. Transportation	411(a)(1)(A) (x) & (xiii).
28. Other Supportive Services and Special Needs, Including Assistance with Meeting Home Heating and Air Conditioning Costs.	411(a)(1)(A) (x) & (xiii).
29. Transitional Services	411(a)(1)(A) (x) & (xiii).
30. Contributions to Individual Development Accounts	411(a)(1)(A) (x) & (xiii).
31. Other	411(a)(1)(A) (x) & (xiii).
Reason for and Amount of Reduction in Assistance—Items 32–42 are the reasons for reduction in assistance	
32. Work Requirements Sanction	411(a)(1)(A)(xiii).
33. Family Sanction for an Adult with No High School Diploma or Equivalent.	411(a)(1)(A)(xiii).
34. Sanction for Teen Parent Not Attending School	411(a)(1)(A)(xiii).
35. Non-Cooperation with Child Support	411(a)(1)(A)(xiii).
36. Failure to Comply with an Individual Responsibility Plan	411(a)(1)(A)(xiii).
37. Other Sanction	411(a)(1)(A)(xiii).
38. Recoupment of Prior Overpayment	411(a)(1)(A)(xiii).
39. Family Cap	411(a)(1)(A)(xiii).
40. Reduction Based on Family Moving into State From Another State	411(a)(1)(A)(xiii).
41. Reduction Based on Length of Receipt of Assistance	411(a)(1)(A)(xiii).

Data elements	Justification
42. Other, Non-sanction	411(a)(1)(A)(xiii).
43. Waiver Evaluation Research Group	411(a)(1)(A)(xii): Use to calculate the participation rate for States with an ongoing waiver evaluation for impact analysis purposes.
44. Is the TANF Family Exempt from the Federal Time Limit	409 (a)(9).
Adult Characteristics—Items 45–88.	
45. Family Affiliation	411(a)(1)(A)(iv) and 411(b): Needed to identify persons in eligible family receiving assistance and other individuals living in the household.
46. Noncustodial Parent Indicator	411(a)(4): Report on Non-custodial Parents requires the number of non-custodial Parents. To provide assistance to non-custodial parents under the State TANF Program, States must include them in the family. Data could be collected under the element Relationship to Head-of-Household. Element was broken out to make the coding cleaner and easier for States to report.
47. Date of Birth	411(a)(1)(A)(iii): Age—Date of birth gives the same information but is a constant.
48. Social Security Number	This information is also readily available. States use Social Security Numbers to carry out the requirements of IEVS (see sections 409(a)(4) and 1137 of the Act). We need this information also for research on the circumstances of children and families as required in section 413(g) of the Act (*i.e.*, to track individual members of the TANF family).
49. Race	411(a)(1)(A)(vii).
50. Gender	Data could be collected under the element Relationship to Head-of-Household (*e.g.*, husband, wife, daughter, son, etc.). Element was broken out to make the coding cleaner and easier for States to report. Used the Secretary's Report to the Congress.
Receives Federal Disability Benefits—Items 51–55.	
51. Receives Federal Disability Insurance Benefits	411(a)(1)(A)(ii) as revised by P.L. 105–33.
52. Receives Benefits Based on Federal Disability Status	411(a)(1)(A)(ii) as revised by P.L. 105–33.
53. Receives Aid Under Title XIV–APDT	411(a)(1)(A)(ii) as revised by P.L. 105–33.
54. Receives Aid Under Title XVI–AABD	411(a)(1)(A)(ii) as revised by P.L. 105–33.
55. Receives Aid Under Title XVI–SSI	411(a)(1)(A)(ii) as revised by P.L. 105–33.
56. Marital Status	411(a)(1)(A)(vi).
57. Relationship to Head-of-Household	411(a)(1)(A)(iv) as revised by P.L. 105–33.
58. Teen Parent with Child in the Family	411(a)(1)(A)(xvii) as revised by P.L. 105–33.
Adult Educational Level—Items 59 and 60.	
59. Highest Level of Education Attained	411(a)(1)(A)(vii).
60. Highest Degree Attained	411(a)(1)(A)(vii).
61. Citizenship/Alienage	411(a)(1)(A)(xv): We have updated our prior coding of citizenship status to reflect the complexity of TANF; also 409(a)(1).
62. Number of Months Countable toward Federal Time Limit in Own State (Tribe).	409(a)(9).
63. Number of Months Countable toward Federal Time Limit in Other States or Tribes.	409(a)(9).
64. Number of Countable Months Remaining Under State's Time Limit	409(a)(9).
65. Is Current Month Exempt from the State's Time Limit	409(a)(9).
66. Employment Status	411(a)(1)(A)(v).
67. Work Participation Status	411(a)(1)(A)(xii): Needed to calculate the work participation rate.
Adult Work Participation Activities—Items 68–81 are the work participation activities and are needed to calculate the work participation rate.	
68. Unsubsidized Employment	411(a)(1)(A)(xi)(III).
69. Subsidized Private Sector Employment	411(a)(1)(A)(xi)(II).
70. Subsidized Public Sector Employment	411(a)(1)(A)(xi)(IV).
71. Work Experience	411(a)(1)(A)(xi)(IV).
72. On-the-job Training	411(a)(1)(A)(xi)(VI).
73. Job Search and Job Readiness Assistance	411(a)(1)(A)(xi)(V).
74. Community Service Programs	411(a)(1)(A)(xi)(IV).
75. Vocational Educational Training	411(a)(1)(A)(xi)(VII).
76. Job Skills Training Directly Related to Employment	411(a)(1)(A)(xi)(VI).
77. Education Directly Related to Employment for Individuals with no High School Diploma or Certificate of High School Equivalency.	411(a)(1)(A)(xi)(I).
78. Satisfactory School Attendance for Individuals with no High School Diploma or Certificate of High School Equivalency.	411(a)(1)(A)(xi)(I).
79. Providing Child Care Services to an Individual who is Participating in a Community Service Program.	411(a)(1)(A)(xi).
80. Additional Work Activities Permitted Under Waiver	411(a)(1)(A)(xii): Use to calculate work participation rate, when approved 1115 waiver permits other work activities.

Data elements	Justification
81. Other Work Activities	Related to 411(a)(1)(A)(xii) and 409(a)(3).
82. Required Hours of Work Under Waiver	411(a)(1)(A)(xii): Use to calculate the Work participation rate, when approved 1115 waiver permits a different number of hours of work participation to count as engaged in work.
Adult Earned Income—Items 83 and 84 break out earned income.	
83. Earned Income Tax Credit (EITC)	411(a)(1)(A)(v).
84. Wages, Salaries, and Other Earnings	411(a)(1)(A)(v).
Adult Unearned Income—Items 85 and 88 break out Unearned income.	
85. Amount of Social Security	411(a)(1)(A)(xiv).
86. Amount of SSI	411(a)(1)(A)(xiv).
87. Amount of Worker's Compensation	411(a)(1)(A)(xiv).
88. Amount of Other Unearned Income	411(a)(1)(A)(xiv).
Child Characteristics—Items 89–109.	
89. Family Affiliation	411(a)(1)(A)(iv) and 411(b): Needed to identify persons in eligible family receiving assistance and other individuals living in the household.
90. Date of Birth	411(a)(1)(A)(iii): Age—Date of birth gives the same information but is a constant.
91. Social Security Number	This information is also readily available. States use Social Security Numbers to carry out the requirements of IEVS (see sections 409(a)(4) and 1137 of the Act). We need this information also for research on the circumstances of children and families as required in section 413(g) of the Act (*i.e.*, to track individual members of the TANF family).
92. Race	411(a)(1)(A)(viii).
93. Gender	Data could be collected under the element Relationship to Head-of-Household (*e.g.*, husband, wife, daughter, son, etc.). Element was broken out to make the coding cleaner and easier for States to report. Used the Secretary's Report to the Congress.
Receives Federal Disability Benefits	
94. Receives Benefits Based on Federal Disability Status	411(a)(1)(A)(ii) as revised by P.L. 105–33.
95. Receives Aid Under Title XVI–SSI	411(a)(1)(A)(ii) as revised by P.L. 105–33.
96. Relationship to Head-of-household	411(a)(1)(A)(iv) as revised by P.L. 105–33.
97. Teen Parent with Child in the Family	411(a)(1)(A)(xvii) as revised by P.L. 105–33.
Child Educational Level—Items 101 and 102.	
98. Highest Level of Education Attained	411(a)(1)(A)(viii).
99. Highest Degree Attained	411(a)(1)(A)(viii).
100. Citizenship/Alienage	411(a)(1)(A)(xv): We have updated our prior coding of citizenship status to reflect TANF; also 409(a)(1).
101. Cooperation with Child Support	409(a)(5).
Child Unearned Income—Items 105 and 106.	
102. Amount of SSI	411(a)(1)(A)(xiv).
103. Amount of Other Unearned Income	411(a)(1)(A)(xiv)—rather than breaking out unearned income into its parts, we ask for an indicator that the recipient has certain types of unearned income.
Child Care Reporting Section—Items 107–109.	
104. Type of Child Care	The CCDF sample will not capture children whose child care is funded by TANF. The data element is collected here because it is required under CCDF and this is the most cost-effective way to capture TANF Child Care information. See Sec. 658K(a)(2)(C).
105. Total Monthly Cost of Child Care	The CCDF sample will not capture children whose child care is funded by TANF. The data element is collected here because it is required under CCDF and this is the most cost-effective way to capture TANF Child Care information. (See Sec. 658K(a)(2)(C)). The Total Amount of the Child Care Subsidy (required by 411(a)) may be derived from this item and the total Monthly cost of child Care.
106. Total Monthly Hours of Child Care Provided During the Reporting Month.	The CCDF sample will not capture children whose child care is funded by TANF. The data element is collected here because it is required under CCDF and this is the most cost-effective way to capture TANF Child Care information. See Sec. 658K(a)(2)(C).

Appendix J—Statutory Reference Table for Appendix B

Data elements	Justification
1. State FIPS Code	Implicit in administering data collection system.
2. County FIPS Code	411(b): Use to construct comparable statistics based on 411(a)(1)(A), for families receiving assistance.
3. Tribal Code	Implicit in administering data collection system.
4. Reporting Month	Implicit in administering data collection system.
5. Stratum	Implicit in administering data collection system.
Family Level Data—Items 6–16.	
6. Case Number	Implicit in administering data collection system.
7. ZIP Code	Needed for geographic coding (and rural/urban analyses) and is readily available.
8. Disposition	Implicit in administering data collection system.
9. Reason for Closure	411(a)(1)(A)(xvi).
10. Number of Family Members	411(b): Use to construct comparable statistics based on 411(a)(1)(A), for families receiving assistance.
11. Receives Subsidized Housing	411 (b): Use to construct comparable statistics based on 411(a)(1)(A), for families receiving assistance.
12. Receives Medical Assistance	411(b): Use to construct comparable statistics based on 411(a)(1)(A), for families receiving assistance.
13. Receives Food Stamps	411(b): Use to construct comparable statistics based on 411(a)(1)(A), for families receiving assistance.
14. Amount of Food Stamp Assistance	411(b): Use to construct comparable statistics based on 411(a)(1)(A), for families receiving assistance.
15. Receives Subsidized Child Care	411(b): Use to construct comparable statistics based on 411(a)(1)(A), for families receiving assistance.
16. Amount of Subsidized Child Care	411(b): Use to construct comparable statistics based on 411(a)(1)(A), for families receiving assistance.
Adult Characteristics—Items 17–39.	
17. Family Affiliation	Needed to identify persons in State-defined family and other individuals living in the household.
18. Date of Birth	411(b): Use to construct comparable statistics based on 411(a)(1)(A), for families receiving assistance.
19. Social Security Number	This information is also readily available. States use Social Security Numbers to carry out the requirements of IEVS (see sections 409(a)(4) and 1137 of the Act). We need this information also for research on the circumstances of children and families as required in section 413(g) of the Act (*i.e.,* to track individual members of the TANF family).
20. Race	411(b): Use to construct comparable statistics based on 411(a)(1)(A), for families receiving assistance.
21. Gender	Data could be collected under the element Relationship to Head-of-Household (*e.g.,* husband, wife, daughter, son, etc.). Element was broken out to make the coding cleaner and easier for States to report. Used the Secretary's Report to the Congress.
Receives Federal Disability Benefits—Items 22–26.	
22. Receives Federal Disability Insurance Benefits	411(b): Use to construct comparable statistics based on 411(a)(1)(A), for families receiving assistance.
23. Receives Benefits Based on Federal Disability Status	411(b): Use to construct comparable statistics based on 411(a)(1)(A), for families receiving assistance.
24. Receives Aid Under Title XIV–APDT	411(b): Use to construct comparable statistics based on 411(a)(1)(A), for families receiving assistance.
25. Receives Aid Under Title XVI–AABD	411(b): Use to construct comparable statistics based on 411(a)(1)(A), for families receiving assistance.
26. Receives Aid Under Title XVI–SSI	411(b): Use to construct comparable statistics based on 411(a)(1)(A), for families receiving assistance.
27. Marital Status	411(b): Use to construct comparable statistics based on 411(a)(1)(A), for families receiving assistance.
28. Relationship to Head-of-Household	411(b): Use to construct comparable statistics based on 411(a)(1)(A), for families receiving assistance.
29. Teen Parent with Child in the Family	411(b): Use to construct comparable statistics based on 411(a)(1)(A), for families receiving assistance.
Adult Educational Level—Items 30 and 31.	
30. Highest Level of Education Attained	411(b): Use to construct comparable statistics based on 411(a)(1)(A), for families receiving assistance.

Data elements	Justification
31. Highest Degree	411(b): Use to construct comparable statistics based on 411(a)(1)(A), for families receiving assistance.
32. Citizenship/Alienage	411(b): Use to construct comparable statistics based on 411(a)(1)(A) and 409(a)(1), for families receiving assistance.
33. Number of Months Countable toward Federal Time Limit in Own State (Tribe).	411(b): Use to construct comparable statistics based on 409(a)(9), for families receiving assistance.
34. Number of Months Countable toward Federal Time Limit in Other States or Tribes.	411(b): Use to construct comparable statistics based on 409(a)(9), for families receiving assistance.
35. Number of Countable Months Remaining Under State's Time Limit	411(b): Use to construct comparable statistics based on 409(a)(9), for families receiving assistance.
36. Employment Status	411(b): Use to construct comparable statistics based on 411(a)(1)(A), for families receiving assistance.
Adult Earned Income—Items 37 and 38 break out earned income	
37. Earned Income Tax Credit (EITC)	411(b): Use to construct comparable statistics based on 411(a)(1)(A), for families receiving assistance.
38. Wages, Salaries, and Other Earnings	411(b): Use to construct comparable statistics based on 411(a)(1)(A), for families receiving assistance.
39. Unearned Income	411(b): Use to construct comparable statistics based on 411(a)(1)(A), for families receiving assistance.
Child Characteristics—Items 40–52.	
40. Family Affiliation	Needed to identify persons in State-defined family and other individuals living in the household.
41. Date of Birth	411(b): Use to construct comparable statistics based on 411(a)(1)(A), for families receiving assistance.
42. Social Security Number	This information is also readily available. States use Social Security Numbers to carry out the requirements of IEVS (see sections 409(a)(4) and 1137 of the Act). We need this information also for research on the circumstances of children and families as required in section 413(g) of the Act (*i.e.,* to track individual members of the TANF family).
43. Race	411(b): Use to construct comparable statistics based on 411(a)(1)(A), for families receiving assistance.
44. Gender	Data could be collected under the element Relationship to Head-of-Household (*e.g.,* husband, wife, daughter, son, etc.). Element was broken out to make the coding cleaner and easier for States to report. Used the Secretary's Report to the Congress.
Receives Federal Disability Benefits—Items 45–49.	
45. Receives Benefits Based on Federal Disability Status	411(b): Use to construct comparable statistics based on 411(a)(1)(A), for families receiving assistance.
46. Receives Aid Under Title XVI–SSI	411(b): Use to construct comparable statistics based on 411(a)(1)(A), for families receiving assistance.
47. Relationship to Head-of-Household	411(b): Use to construct comparable statistics based on 411(a)(1)(A), for families receiving assistance.
48. Teen Parent with Child in the Family	411(b): Use to construct comparable statistics based on 411(a)(1)(A), for families receiving assistance.
49. Highest Level of Education Attained	411(b): Use to construct comparable statistics based on 411(a)(1)(A), for families receiving assistance.
Child Educational Level—Items 52 and 53.	
50. Highest Degree	411(b): Use to construct comparable statistics based on 411(a)(1)(A), for families receiving assistance.
51. Citizenship/Alienage	411(b): Use to construct comparable statistics based on 411(a)(1)(A) and 409(a)(1), for families receiving assistance.
52. Cooperation with Child Support	411(b): Use to construct comparable statistics based on 409(a)(5), for families receiving assistance.
53. Unearned Income	411(b): Use to construct comparable statistics based on 411(a)(1)(A), for families receiving assistance.

Appendix K—Statutory Reference Table for Appendix C

Data elements	Statutory basis
1. State FIPS Code	Implicit in administering data collection system.
2. Tribal Code	Implicit in administering data collection system.
3. Calendar Quarter	Implicit in administering data collection system.
4. Total Number of Applications	411(b): Use in Report to Congress.

Data elements	Statutory basis
5. Total Number of Approved Applications	411(a): Implicit in use of samples. Needed to weight sample data report for the newly, approved applicants portion of the sample. 411(b): Use in Report to Congress.
6. Total Number of Denied Applications	411(b): Use in Report to Congress.
7. Total Amount of Assistance	411(a)(6) as revised by P.L. 105–33.
8. Total Number of Families	411(a)(6) as revised by P.L. 105–33. 407(b)(3): Use in calculation of caseload reduction for adjusting the participation rate standard. 411(a): Implicit in use of samples to weight State data to national totals.
9. Total Number of Recipients	411(a)(6) as revised by P.L. 105–33.
10. Total Number of Adult Recipients	411(a)(6) as revised by P.L. 105–33.
11. Total Number of Child Recipients	411(a)(6) as revised by P.L. 105–33.
12. Total Number of Two-Parent Families	411(a)(6) as revised by P.L. 105–33. 407(b)(3): Use in calculation of caseload reduction for adjusting the participation rate standard.
13. Total Number of One-Parent Families	411(a)(6) as revised by P.L. 105–33.
14. Total Number of No-Parent Families	411(a)(6) as revised by P.L. 105–33.
15. Total Number of Non-custodial Parents Participating in Work Activities.	411(a)(4).
16. Total Number of Minor Child Heads-of-Household	Used to test the reliability and representativeness of the sample. 411(b): Use in Report to Congress.
17. Total Number of Births	413(e): Needed to calculate the Annual Ranking of States related to Out-of-Wedlock Births.
18. Total Number of Out-of-Wedlock Births	413(e): Needed to calculate the Annual Ranking of States related to Out-of-Wedlock Births.
19. Total Number of Closed Cases	411(a): Implicit in use of samples. Needed to weight sample data report for families no longer receiving assistance.

[FR Doc. 97–30195 Filed 11–17–97; 8:45 am]

BILLING CODE 4184–01–P

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November 20, 1997

Part III

Department of the Treasury

Office of the Comptroller of the Currency

12 CFR Part 3

Federal Reserve System

12 CFR Parts 208 and 225

Federal Deposit Insurance Corporation

12 CFR Part 325

Department of the Treasury

Office of Thrift Supervision

12 CFR Part 567

Risk-Based Capital Standards; Recourse and Direct Credit Substitutes; Correction; Proposed Rule

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 3

[Docket No. 97–22]

RIN 1557–AB14

FEDERAL RESERVE SYSTEM

12 CFR Parts 208 and 225

[Regulations H and Y; Docket No. R–0985]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 325

RIN 3064–AB31

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 567

[Docket No. 97–86]

RIN 1550–AB11

Risk-Based Capital Standards; Recourse and Direct Credit Substitutes; Correction

AGENCIES: Office of the Comptroller of the Currency, Treasury; Board of Governors of the Federal Reserve System; Federal Deposit Insurance Corporation; and Office of Thrift Supervision, Treasury.

ACTION: Joint notice of proposed rulemaking; correction.

SUMMARY: The Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Office of Thrift Supervision (collectively, the agencies) are issuing a correction to its joint notice of proposed rulemaking published on November 5, 1997 to clarify three of the tables contained in the preamble to the rule. The proposed rule would revise the agencies' risk-based capital standards to address recourse and direct credit substitutes.

FOR FURTHER INFORMATION CONTACT: Mary H. Gottlieb, Office of Thrift Supervision, (202) 906–7135; or any of the persons listed in the joint notice of proposed rulemaking.

SUPPLEMENTARY INFORMATION: On November 5, 1997, the agencies published a joint notice of proposed rulemaking concerning recourse and direct credit substitutes. 62 FR 59944 (November 5, 1997). It has been determined that three of the tables appearing in the preamble at 62 FR 59958–59959 are in need of clarification. These tables, entitled ''Residential Mortgage-Backed Securities,'' ''Asset-Backed Securities,'' and ''Commercial Mortgage-Backed Securities,'' are being reprinted in their entirety at the end of this correction document.

Dated: November 10, 1997.

Jessie Gates,

Federal Register Liaison, Office of the Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System, November 10, 1997.

Barbara R. Lowrey,

Associate Secretary of the Board.

Dated at Washington, D.C., this 12th day of November, 1997.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

Dated: November 7, 1997.

By the Office of Thrift Supervision.

Mary H. Gottlieb,

Federal Register Liaison Officer.

The corrected tables follow:

BILLING CODE 4810–33–P, 6210–01–P, 6714–01–P, 6720–01–P

Residential Mortgage-Backed Securities

Pool Type[1,2]	"Rating Benchmark" Prior Credit Enhancement Required for "A" Rating	Pool Standards
30-year loans	1.6 percent	Pools include at least 400 loans for each pool type. No borrower concentration over 3 percent for each pool type.
15-year loans	0.8 percent	
Adjustable Rate Mortgages (ARMs) (1,5), (2,6)	2.4 percent	
Hybrid loans (fixed-to-variable)	2.4 percent	
Balloon loans	2.0 percent	
	For no documentation and reduced documentation loans, multiply the above enhancements by 2. For condominiums, two-to-four family, and cooperative apartments, multiply the above enhancements by 2. For B and C loans, multiply the above enhancements by 3. For loan-to-value (LTV) ratios equal to or below 80 percent: -- Use above enhancements. -- Multiply above enhancements by 2, if there is private mortgage insurance (PMI) that brings loans below 80 percent. For LTV ratios above 80 percent, multiply the above enhancements by 4. For the first five years of the securitization, the above enhancement requirement, as a percentage of the outstanding principal, remains fixed. For years six through ten, the enhancement requirement would be multiplied by 0.75. Beyond ten years, the enhancement would be multiplied by 0.5[3,4].	

1 For positions that represent less than 10 percent of the size of the underlying pool of loans, add 20 percent to the enhancement level.
2 For closed-end second mortgage securities, determine the LTV ratio of the loans in the security and apply the enhancement requirements for the underlying collateral. In addition, change the 15-year enhancement requirement to 1.6 percent due to increased risk of security.
3 The reduction in the muliplier over time reflects the reduced risk of the mortgage portfolio due to seasoning.
4 For a six-year old 15-year mortgage-backed security backed by B and C loans that have LTV ratios above 80 percent, the enhancement would be 0.8 percent x 3 x 4 x 0.75 = 7.2 percent.

Asset-Backed Securities

Pool Type[1]	"Rating Benchmark" Prior Credit Enhancement Required for "A" Rating	Pool Standards
Credit Cards[2]	The higher of 6 percent or 1.2 times lagged charge-off rate[3].	Enhancement has access to excess spread.
Auto Loans Prime (A type) Sub-prime (B, C, and D types)	7.0 percent The higher of 15.0 percent or 3 times net expected loss rate[4].	Sellers of automobile loans must have at least three years of historical information. Enhancement has access to excess spread.
Trade Receivables	12.0 percent per loan pool[5] (if all sellers of trade receivables are rated 1or 2) 18.0 percent per loan pool[5] (if any seller of trade receivables is rated 3 or 4 and no lower than 4)	Pools may not have seller concentrations above 5 percent of pool amount. Based on Federal Reserve Board rating criteria for trade receivables, each seller must be rated between 1 and 4.
	All of the above enhancements will remain fixed as a percentage of outstanding principal, with a floor of 3 percent of original principal.	For credit cards and auto loans, pool must be randomly selected and nationally-diversified.

1 For positions that represent less than 10 percent of the size of the underlying pool of loans, add 20 percent to the credit enhancement level.
2 Credit cards include home equity lines of credit that are similar to credit card loans.
3 Lagged charge-off rate is based on the monthly average of past six month's charge-offs, multiplied by twelve, then divided by the average outstanding balance from a year ago.
4 Net expected loss rate is the monthly average of last quarter's gross default amount netted against recoveries, multiplied by twelve, then divided by the average outstanding loan balance for the last quarter.
5 Overcollateralization amount would count toward credit enhancement.

Commercial Mortgage-Backed Securities

Pool Type[1]	"Rating Benchmark" Prior Credit Enhancement Required for "A" Rating	Pool Standards
Office	26.0 percent	Debt-service coverage at least 1.25
Regional Mall	10.0 percent	Debt-service coverage at least 1.35
Industrial/Anchored Retail	13.0 percent	Debt-service coverage at least 1.35
Multifamily	17.0 percent	Debt-service coverage at least 1.25
	The above enhancements are for pools of loans with loan-to-value ratios less than or equal to 70 percent. For pools of loans with greater than 70 percent loan-to-value ratio, multiply the above enhancements by 1.5. For pools with property quality below the B level, multiply the above enhancements by 1.5. The above enhancements will remain fixed as a percentage of outstanding principal, with a floor of 3 percent of original principal.[2]	For each type of pool above: -- No borrower concentration over 5 percent of pool amount. -- The amortization schedule does not exceed 25 years.

1 For positions that represent less than 10 percent of the underlying pool of loans, add 20 percent to the credit enhancement level.

2 For example, the enhancement for a security containing regional mall loans with an 80 percent LTV ratio and B quality property would be 10 percent x 1.5 x 1.5 = 22.5 percent.

[FR Doc. 97–30544 Filed 11–19–97; 8:45 am]

BILLING CODE 4810–33–C, 6210–01–C, 6714–01–C, 6720–01–C

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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Air quality implementation plans; approval and promulgation; various States:

Ohio; published 9-22-97

Clean Air Act:

Compliance assurance monitoring; published 10-22-97

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Clopidol, etc.; published 11-21-97

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Sponsor name and address changes—

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TRANSPORTATION DEPARTMENT

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New Piper Aircraft, Inc.; correction; published 11-3-97

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Maritime Administration

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Carriage of less-than-shipload lots of bulk and packaged preference cargoes; fair and reasonable guidelines rates determination; CFR part removed; published 11-19-97

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Agricultural Marketing Service

Agricultural commodities; laboratory testing service fees; comments due by 11-28-97; published 10-28-97

Irish potatoes grown in—

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Animal and Plant Health Inspection Service

Livestock and poultry disease control:

Tuberculosis-exposed animals; transportation and disposal expenses; comments due by 11-24-97; published 9-23-97

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Commodity Credit Corporation

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Wheat, feed grains, rice and upland cotton; production flexibility contracts; comments due by 11-24-97; published 10-23-97

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Food and Consumer Service

Commodity supplemental food program:

Caseload assignment; comments due by 11-24-97; published 10-23-97

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National Oceanic and Atmospheric Administration

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Caribbean, Gulf, and South Atlantic fisheries—

Gulf of Mexico reef fish; comments due by 11-25-97; published 9-26-97

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Chinook salmon; comments due by 11-28-97; published 11-13-97

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BP Exploration (Alaska); on-ice seismic activity; ringed seals; comments due by 11-26-97; published 10-27-97

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Comercial items and commercial components; FAR provisions and clauses in subcontracts; comments due by 11-24-97; published 9-23-97

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Taxes associated with divested segments; comments due by 11-24-97; published 9-23-97

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Engineers Corps

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Kentucky et al.; comments due by 11-24-97; published 10-23-97

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Maneb; comments due by 11-24-97; published 9-24-97

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National priorities list update; comments due by 11-24-97; published 9-25-97

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Missouri; comments due by 11-24-97; published 10-17-97

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